

# INDEX

	PAGE
Indictment .....	1
Motion to dismiss indictment .....	8
Memorandum opinion denying motion to dismiss .....	10
Request for a bill of particulars .....	11
Affidavit of Herbert J. Fabricant in support of request .....	11
Affidavit of bias .....	12
Memorandum opinion of Justice Holtzoff certifying case to Criminal Court No. 1 for reassignment .....	20
Order as to defendant's instructions; verdict, etc. ....	22
Defendant's motion for judgment of acquittal as to Count Two granted; defendant's motion for a new trial denied; judgment; sentence, etc. ....	22
Motion for new trial or acquittal .....	23
Notice of appeal .....	27
Docket entries .....	27
Proceedings:	
Witnesses:	
Frank S. McArthur	
Direct Examination .....	32
Cross-examination .....	43
Redirect examination .....	69
Recross examination .....	70

Martin C. Smith

Direct examination ..... 73

Cross examination ..... 76

Honorable Fred A. Hartley, Jr.

Direct examination ..... 83

Cross examination ..... 89

Redirect examination ..... 113

Recross examination ..... 117

Fred L. McStroul

Cross Examination ..... 141, 160

Redirect examination ..... 151

Recross examination ..... 162

Redirect examination ..... 162

Edward C. McCowen

Direct examination ..... 163

Cross examination ..... 165

Max Schwabe

Direct examination ..... 180

Cross examination ..... 181

Honorable Charles J. Kersten

Direct examination ..... 185

Cross examination ..... 186

Honorable Wint Smith

Direct examination ..... 191

Honorable O. C. Fisher

Direct examination ..... 192

Cross examination ..... 192



Honorable John E. Kennedy	
Direct examination .....	198
Cross examination .....	198
Redirect examination .....	203
Honorable Clare E. Hoffman	
Direct examination .....	204
Cross examination .....	205
Honorable Walter E. Brehm	
Direct examination .....	208
Honorable Thomas L. Owens	
Direct examination .....	212
Cross examination .....	212
Honorable Carroll D. Kearns	
Direct examination .....	218
Cross examination .....	219
Honorable Ralph W. Gwinn	
Direct examination .....	224
Cross examination .....	224
Honorable Richard Nixon	
Direct examination .....	229
Cross examination .....	230
Discussion on Prayers .....	241
Charge to the Jury .....	250
Verdict of the jury .....	263
Sentence .....	272
Stipulation re record for printing .....	272

# INDEX (Continued)

iv

	Page
Proceedings in U. S. C. A., District of Columbia Circuit	275
Opinion, Edgerton, J.	275
Judgment	278
Petition for rehearing	279
Order denying petition for rehearing	284
Designation of record on petition for writ of certiorari	285
Clerk's certificate	285
Order extending time within which to file petition for certiorari	286
Order allowing certiorari	287

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 9788

HAROLD ROLAND CHRISTOFFEL

*Appellant,*

VS.

UNITED STATES OF AMERICA;

*Appellee.*

## JOINT APPENDIX TO BRIEFS

Appeal from the District Court of the United States  
for the District of Columbia

*District Court of the United States  
for the District of Columbia*

1247

United States of America

v.

Harold Roland Christoffel

Grand Jury Original

Criminal No. 791-47

Sec. 22-2501,

D. C. Crim. Code

The Grand Jury charges:

### *Count I*

1. On March 1, 1947, and prior and subsequent thereto, the Committee on Education and Labor of the House of Representatives of the Eightieth Congress of the United States was duly and regularly organized and existing and

in the performance of its powers and functions as defined by the Legislative Reorganization Act of 1946. The Honorable Fred A. Hartley, Jr., a member of Congress from the State of New Jersey, was duly elected, qualified and acting chairman of said Committee. In furtherance of its powers and functions and in pursuance of the authority granted to it by Resolution No. 111 of said House of Representatives, adopted and agreed to on February 26, 1947, the said Committee on said March 1, 1947, and prior and subsequent thereto, was conducting hearings and taking sworn testimony in the City of Washington, District of Columbia, to inquire into the cause of labor disputes, work stoppages and strikes and thereby was seeking to learn not only the causes of those disputes, work stoppages and strikes, but the methods of procedures followed by those who engaged in those activities, the purposes they had in mind and their connection or lack of connection with organizations, associations, or groups which were or might be engaged in subversive activities, the determination of said questions being necessary in aiding the said  
 1248 Committee to frame such remedial legislation, for submission to said House of Representatives, as the facts disclosed by said hearings might make appropriate.

2. In connection with and as a part of said hearings, and particularly inquiring whether organizations, associations or groups engaged in or committed to subversive activities, were exercising or attempting to exercise control of labor unions for the purpose of fomenting such labor disputes, work stoppages and strikes, it became and was material to said inquiry and to said hearings to take sworn testimony relating to the activities and control of a certain labor union in the City of Milwaukee, Wisconsin, and its suburbs and nearby towns, known as Allis-Chalmers Workers Union—Local 248, UAW-CIO, hereinafter referred to as Local 248, and relating also to the activities and control of the Milwaukee County Industrial Union Council of the Congress of Industrial Organizations, which latter organization was then and had theretofore been a

council including all or many of the labor unions in Milwaukee County, Wisconsin, which were members of and affiliated with the said Congress of Industrial Organizations; and it was and became further material to said inquiry and to said hearings to inquire whether said Local 248 and said Milwaukee County Industrial Union Council, or either of them, was then or had been controlled and dominated by members of the Communist Party, the Communist Political Association, or by persons following the Communist Party line, or by persons known and designated as "fellow travelers" with Communists, or by any other persons committed to or connected with the Communist doctrines, purposes and activities. In this same connection it became and was further material to said hearings and inquiry by said Committee to determine whether the 1249 defendant HAROLD ROLAND CHRISTOFFEL,

who for many years was an important officer of and as such was in a dominating position with said Local 248, and of said Milwaukee County Industrial Union Council, was a member of the Communist Party, of the Communist Political Association, had worked with and participated in the activities of said Communist organizations, and knew, consulted and was associated with certain publicly known and admitted members and officers of the Communist Party in connection with the activities of the Communist Party, to wit, one Fred Blair, then the head of said party in the State of Wisconsin; and one Ned Sparks, previously the head of said party in the State of Wisconsin, during the period of time when said defendant HAROLD ROLAND CHRISTOFFEL was such an officer of said Local 248 and of said Milwaukee County Industrial Union Council.

3. On the 1st day of March, 1947, the defendant HAROLD ROLAND CHRISTOFFEL appeared before the said Committee on Education and Labor, at the City of Washington in the District of Columbia, as a witness in a hearing in which a law of the United States authorized an oath to be administered, and took an oath before the Honorable Fred



7  
4  
A. Hartley, Jr., the chairman of said Committee, then and there acting as such, and then and there as such chairman being competent under the laws of the United States to administer such oath to the defendant, that he would testify truly in the matters then being inquired of by said Committee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say, he, the said defendant, did then and there wilfully, falsely, and under his said oath, make the following statement, to wit, that he was not then and never was a member 1250 of the Communist Party.

And the Grand Jury says that, in truth and in fact, the said defendant HAROLD ROLAND CHRISTOFFEL, at the time he so testified before said Committee, was then a member of the Communist Party and had been such member for several years prior thereto.

### Count II

1. The Grand Jury further charges that they hereby reallege, reaffirm, and incorporate as if herein set forth in full each and every allegation contained in paragraphs 1 and 2 of the First Count of this indictment and do further present:

2. That on the 1st day of March, 1947, the defendant HAROLD ROLAND CHRISTOFFEL appeared before the said Committee on Education and Labor at the City of Washington in the District of Columbia as a witness in the same hearing described in the First Count and having taken an oath before the chairman of said Committee, as also alleged in said First Count, that he would testify truly in the matters then being inquired of by said Committee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say, he, the said defendant, did then and there wilfully, falsely, and under his oath, make the following statement.



to wit, that he was never a member of the Communist Political Association.

And the Grand Jury says that, in truth and in fact, the said defendant HAROLD ROLAND CHRISTOFFEL had been a member of the Communist Political Association.

### *Count III*

1. The Grand Jury further charges that they hereby reallege, reaffirm, and incorporate as if herein set  
1251 forth in full each and every allegation contained in paragraphs 1 and 2 of the First Count of this indictment and do further present:

2. That on the 1st day of March, 1947; the defendant HAROLD ROLAND CHRISTOFFEL appeared before the said Committee on Education and Labor at the City of Washington in the District of Columbia as a witness in the same hearing described in the First Count and having taken an oath before the chairman of said Committee, as also alleged in said First Count, that he would testify truly in the matters then being inquired of by said Committee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say, he, the said defendant, did then and there wilfully, falsely, and under his oath, make the following statement, to wit, that he had never worked with the Communist Party or with the Communist Political Association.

And the Grand Jury says that, in truth and in fact, the said defendant HAROLD ROLAND CHRISTOFFEL had worked with the Communist Party and with the Communist Political Association.

### *Count IV*

1. The Grand Jury further charges that they hereby reallege, reaffirm, and incorporate as if herein set forth in full each and every allegation contained in paragraphs

1 and 2 of the First Count of this indictment and do further present:

2. That on the 1st day of March, 1947, the defendant HAROLD ROLAND CHRISTOFFEL appeared before the said Committee on Education and Labor at the City of Washington in the District of Columbia as a witness in the same hearing described in the First Count and having taken an oath before the chairman of said Committee, as also alleged in said First Count, that he would testify truly in the matters then being inquired of by said 1252 Committee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say, he, the said defendant, did then and there wilfully, falsely, and under his oath, make the following statement, to wit, that he had never participated in the activities of the Communist Party.

And the Grand Jury says that, in truth and in fact the said defendant HAROLD ROLAND CHRISTOFFEL had participated in the activities of the Communist Party.

### Count V

1. And the Grand Jury further charges that they hereby reallege, reaffirm, and incorporate as if herein set forth in full each and every allegation contained in paragraphs 1 and 2 of the First Count of this indictment and do further present:

2. That on the 1st day of March, 1947; the defendant HAROLD ROLAND CHRISTOFFEL appeared before the said Committee on Education and Labor at the City of Washington in the District of Columbia as a witness in the same hearing described in the First Count and having taken an oath before the chairman of said Committee, as also alleged in said First Count, that he would testify truly in the matters then being inquired of by said Com-

mittee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say, he, the said defendant, did then and there wilfully, falsely, and under his oath, make the following statement, to wit, that he had never supported the Communists or endorsed Communism.

And the Grand Jury says that, in truth and in fact, the said defendant HAROLD ROLAND CHRISTOFFEL had supported the Communists and endorsed Communism.

1253

*Count VI*

1. The Grand Jury further charges that they hereby reallege, reaffirm, and incorporate as if herein set forth in full each and every allegation contained in paragraphs 1 and 2 of the First Count of this indictment and do further present:

2. That on the 1st day of March, 1947, the defendant HAROLD ROLAND CHRISTOFFEL appeared before the said Committee on Education and Labor at the City of Washington in the District of Columbia as a witness in the same hearing described in the First Count and having taken an oath before the chairman of said Committee, as also alleged in said First Count, that he would testify truly in the matters then being inquired of by said Committee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say, he, the said defendant, did then and there wilfully, falsely, and under his oath, make the following statement, to wit, that he did not know Ned Sparks and did not know Fred Blair.

And the Grand Jury says that, in truth and in fact, the said defendant HAROLD ROLAND CHRISTOFFEL, at the time he so testified before said Committee, knew both Ned Sparks and Fred Blair and for a number of years had

been intimately associated with them in connection with the activities of Communism and of the Communist Party.

GEORGE MORRIS FAY

GEORGE MORRIS FAY

United States Attorney

JOHN S. PRATT

JOHN S. PRATT

Special Assistant to the  
Attorney General

FRANK H. PATTON

FRANK H. PATTON

Special Assistant to the  
Attorney General

A True Bill:

HELEN M. HOFFMAN

Foreman

1254 Filed Sep 3 1947 Charles E. Stewart, Clerk

The defendant moves that the indictment be dismissed on the following grounds:

1. The indictment fails to state facts sufficient to constitute an offense under Title 22, Section 2501 of the District of Columbia Criminal Code, in that the Chairman of the Committee on Education and Labor of the House of Representatives of the Eightieth Congress of the United States had no authority under the Code of the District of Columbia to administer an oath to the defendant and therefore no offense was committed against the District of Columbia.

2. The indictment fails to state facts sufficient to constitute an offense under Title 22, Section 2501 of the District of Columbia Criminal Code, in that the oath was administered by the Chairman of the Committee on Education and Labor of the House of Representatives of the Eightieth Congress of the United States and the testimony was given before said Committee with respect to mat-

ters pertaining to the Federal Government, and consequently if any offense of perjury was committed it was an offense only against the Federal Government of the United States and not against the District of Columbia.

1255 3. The indictment fails to state facts sufficient to constitute an offense against the United States in that the indictment fails to state that a quorum of the Committee on Education and Labor of the House of Representatives of the Eightieth Congress of the United States was present at the time that the alleged perjury was committed.

4. The indictment does not state an offense against the United States in that it appears on the face of the indictment that the questions to which perjurious answers were allegedly given by the defendant were without any ascertainable meaning and that, in responding to said questions, it was not possible to commit the crime of perjury.

5. The indictment does not state an offense against the United States in that it appears on the face of the indictment that the questions to which perjurious answers were allegedly given were improper and not pertinent to the subject under investigation, as defined in Resolution No. 111.

The defendant further moves that Counts II, III, IV and V, and each of them, be stricken on the ground that it appears on the face of the indictment that Counts II, III, IV and V are repetitive and duplicitous.

**ROGGE, FABRICANT, GORDON  
& GOLDMAN**

By: O. John Rogge

Member of Firm

Office & P. O. Address:

401 Broadway,

Borough of Manhattan

City of New York

3710 39th Street, N. W.

Washington, D. C.



1256 Filed Oct 3 1947 Harry M. Hull, Clerk

*Memorandum Opinion*

Motion to dismiss denied.

\* \* \* It is wholly immaterial what statute was in the mind of the District Attorney when he drew the indictment, if the charges are embraced by some statute in force \* \* \* We must look to the indictment itself, and if it properly charges an offense under the laws of the United States that is sufficient to sustain it, although the representative of the United States may have supposed that the offense charged was covered by a different statute."

*Williams v. United States*, 168 U. S. 382, 389. See also *Williams v. United States*, 148 Fed. 2d 960, 961 (CCA 9th), 1945. Rule 7 Fed. Rules of Criminal Procedure. Also, in general: *Morton v. Welch*, 162 Fed. 2d, Sept. 22, 1947, Pp. 753-928 at 841 (CCA 4th) decided June 20, 1947.

Apart from that it may be observed that the district statute and general federal statute are practically the same in wording. There is no essential difference and divergency of penalty is not material for the purposes of this motion.

That being the view I take of the matter, Title 2, Sec. 191 U. S. C. A. (R. S. § 101; June 26, 1884, C. 123, 23 Stat. 60) applies, in the sense that it provides as indicated for the administration of oaths by duly specified or authorized members of Congress. Other matters of alleged defect raised by counsel, such as failure to allege presence of quorum, if material are evidential and it is so held, while that of jeopardy is prospective and therefore premature.

MATTHEW F. MCGUIRE

Associate Justice

October 3, 1947



1257 Filed Sep 3 1947 Charles E. Stewart, Clerk

SIR:

PLEASE TAKE NOTICE, that upon the affidavit of HERBERT J. FABRICANT, ESQ., duly verified the 2nd day of September, 1947; upon the indictment found against the defendant, and upon all the proceedings heretofore had herein, a motion will be made at a Term of this Court, held at the United States District Courthouse in Washington, D. C., on the 19th day of September, 1947, for an order directing the United States Attorney to serve and file a bill of particulars of the above described indictment, particularly setting forth the following:

1259 8. State the names of the Representatives who were members of the House Committee on Education and Labor and who were present at the hearing when the defendant, Christoffel, allegedly made perjurious statements.

Yours, etc.

ROGGE, FABRICANT, GORDON  
& GOLDMAN

By: O. John Rogge,

401 Broadway

Borough of Manhattan

City of New York

3710 39th Street, N. W.

Washington, D. C.

1262 Filed Sep 3 1947 Harry M. Hull, Clerk

STATE OF NEW YORK  
COUNTY OF NEW YORK

SS:

HERBERT J. FABRICANT, being duly sworn, deposes and says:

1. He is one of the attorneys for the defendant named in the above bill of indictment.

2. He makes this affidavit since he has consulted and conferred with the said defendant with respect to the charges in the said bill of indictment and is apprised of the information possessed by said defendant with respect to the charges in said indictment.

3. This application is made in good faith, for the purpose of informing the said defendant of the particular offense upon which he stands charged and to which he must answer.

4. The defendant cannot properly answer the charges set forth in said indictment without the additional information asked for in said request for a bill of particulars.

5. The indictment is so vague and general that the said defendant cannot properly prepare his defense without the further specifications asked for in said request for a bill of particulars.

HERBERT J. FABRICANT

Sworn to before me this  
2nd day of September, 1947.

ADELE KAUFMAN

Notary Public, New York County  
N. Y. Co. Clk's No. 52, Reg. No. 463-K-S  
Commission Expires March 30, 1948

1263 Filed Dec 26 1947 Harry M. Hull, Clerk

HAROLD ROLAND CHRISTOFFEL, being  
duly sworn, deposes and says:

1. I am a resident of the State of Wisconsin and the defendant in the above entitled prosecution.

2. I am accused herein of having given perjurious testimony before the Committee on Education and Labor of the House of Representatives of the 80th Congress of the United States with respect to the questions, among others, whether I was a communist and whether I associated with certain persons alleged to be communist sympathizers.

3. I believe that the Honorable Alexander Holtzoff, the judge to whom this cause has been assigned for trial, has personal bias and prejudice against me and in favor of the opposing party herein.

1264 4. I can summarize the bases for my belief as follows:

(1) Justice Holtzoff was a legal advisor to and closely associated with the Federal Bureau of Investigation when it investigated the American Peace Mobilization, an organization with which I have been associated and which the Attorney General has designated as "subversive", partly upon the basis of the investigation which had been conducted by the Federal Bureau of Investigation;

(2) Justice Holtzoff participated in other similar activities of the Federal Bureau of Investigation and of the Department of Justice, and was a close associate of J. Edgar Hoover, and as a result he is, in my opinion, unfavorably disposed towards any individual or group charged with being communistic or sympathetic to communism;

(3) in two cases with which I am familiar, Justice Holtzoff refused to disqualify himself after affidavits of bias and prejudice were filed by the defendants in those cases although the defendants therein allegedly included individuals and groups investigated by the Federal Bureau of Investigation during the association of Justice Holtzoff with the Bureau; and

(4) the hostility manifested by Justice Holtzoff in the trial, presided over by him, of Gerhart Eisler, an admitted alien communist.

5. From 1938 to 1945 Justice Holtzoff was Special Assistant to the Attorney General, and from 1940 to 1265 1945 he was a legal advisor to the Federal Bureau of Investigation (see Statement of Assistant to the Attorney General, Hearings before the Senate Appropriations Committee, Subcommittee of the 1941 Appropriation Bill of the State, Commerce and Justice Departments, 76th Cong. 3 Sess., P. 71).

6. A letter written by Justice Holtzoff to Mary Beard dated March 25, 1940, (Vol. 87, Cong. Rec., A2466), reveals his long standing, frequent and intimate association with the Federal Bureau of Investigation. The following is an excerpt from that letter:

"It so happens that for the past 13 years I have been, and am now, connected with the Department of Justice in a legal capacity. The Federal Bureau of Investigation, as you know, is a branch of that Department. I have had numerous official contacts with the Bureau, sometimes almost daily. In addition, Mr. J. Edgar Hoover is my close personal friend. Consequently I have had an excellent opportunity to observe the operations of the Federal Bureau of Investigation at close range from day to day." (See also statement of the Assistant to the Attorney General, Hearings before the Senate Appropriations Committee, Subcommittee on the 1941 Appropriations Bill of the State, Commerce and Justice Departments, 76th Cong., 3 Sess., P. 71).

7. Upon information and belief, Justice Holtzoff, while legal advisor to the Federal Bureau of Investigation, and having "numerous official contacts with the Bureau, sometimes almost daily", played a part in advising and aiding in determining the policy, nature, scope and objectives of the Bureau's investigations. It is common knowledge that a substantial number of these investigations were directed at organizations and individuals suspected of "communistic" or "subversive" tendencies and activities.

1266 8. One of the organizations thus investigated by the Federal Bureau of Investigation during the period that Justice Holtzoff was a legal advisor to the Bureau was the American Peace Mobilization.

9. The Attorney General of the United States has recently designated the American Peace Mobilization as being "communistic" or "subversive". Upon information and belief, that designation is in large part based upon investigations conducted by the Federal Bureau of Investi-

gation while Justice Holtzoff was associated with that Bureau and was advising them with reference to their investigations, including the investigation of the American Peace Mobilization.

10. Although I consider that the designation of the American Peace Mobilization by the Attorney General is unwarranted and unjustifiable, and although I was at no time a member of the American Peace Mobilization, nevertheless I have been associated with that organization and I believe that upon this fact of my association being disclosed at the trial, if it is not publicly known already, I will be unable to receive a fair trial from Justice Holtzoff.

11. Moreover the role that Justice Holtzoff played in the Department of Justice and as a legal advisor to the Federal Bureau of Investigation over a period of years has unfavorably preconditioned his attitude toward those suspected of communistic tendencies, and I am such a person.

12. Upon information and belief, in connection with his duties as a legal advisor to the Federal Bureau of Investigation, Justice Holtzoff gave advice to J. Edgar Hoover, Chief of that Bureau, as to procedures to be followed in taking action against communists, or suspected communists; as Special Assistant to the Attorney General he explained and supported on behalf of the Attorney General a bill permitting the deportation of aliens and their being placed in places of detention upon proof of their membership in the Communist Party and upon a finding of certain other facts (see hearings before Subcommittee No. 2 of the Committee on the Judiciary, House of Representatives, 1 Sess., H. R. 3, "Supervision and Detention of Certain Aliens", pp. 1-25); he appeared as representative of the Federal Bureau of Investigation on many occasions and defended that Bureau with respect to its alleged violations of civil liberties in investigating



alleged communistic organizations and individuals, in such a partisan fashion that he was publicly charged, by the eminent historian Mary Beard, wife of Professor Charles Beard, with distorting the facts (87 Cong. Rec. A2470-1):

13. Justice Holtzoff gave advice with respect to activities, legislative and otherwise, which reflected the strong anti-communist views of Mr. Hoover, who has referred to communism as "red fascism".

14. In his capacity as a Federal District Court Judge, Justice Holtzoff has twice refused to disqualify himself where defendants filed affidavits of bias and prejudice in prosecutions which involved individuals and groups charged by the Federal Bureau of Investigation with being communist or communist fronts.

15. In *United States v. Barsky*, Criminal No. 368-47, District of Columbia, counsel, on the 5th day of June, 1947, certified to an affidavit of bias and prejudice made by Dr. Edward K. Barsky, Chairman of the Joint Anti-Fascist Refugee Committee, and one of the defendants therein. That affidavit stated, among other things, that various investigations by the Federal Bureau of Investigation had culminated in a report issued by J. Edgar Hoover, Chief of that Bureau, to the United States Immigration Service, wherein Mr. Hoover designated the Joint Anti-Fascist Refugee Committee as a "communist front organization"; and that affidavit further stated that upon information and belief, Justice Holtzoff, while a legal advisor to the Federal Bureau of Investigation, played a part in determining the policy, nature, scope and objectives of the Bureau's investigations, including those of the Joint Anti-Fascist Refugee Committee and its predecessor committee, the United American Spanish Aid Committee.

16. In spite of the above mentioned affidavit, Justice Holtzoff, by an order of the Court issued at 1:45 p.m. on June 10, 1947, refused to disqualify himself.



17. Thereupon Dr. Barsky immediately requested a stay of forty-eight hours in the proceedings therein, pending a determination by the Court of Appeals of a petition for a writ of mandamus; whereupon Justice Holtzoff at once refused the request for a stay and ordered the trial in the above mentioned action set for the same day, the 10th day of June, 1947 at 1:45 p.m., to commence.

18. The defendant in that action, Dr. Edward K. Barsky, as petitioner thereupon filed in *Barsky v. Holtzoff*, Misc. No. 126, Court of Appeals for the District of Columbia, a petition for a writ of mandamus. On that same day, June 10, 1947, the Court of Appeals for the District of Columbia issued an order granting the petition for leave to file the petition for a writ of mandamus and directing Justice Holtzoff to proceed no further in the trial  
1269 of the said case pending the further order of that Court.

19. On the 11th day of June, 1947, the said Court of Appeals for the District of Columbia issued a writ of prohibition finally directing Justice Holtzoff to proceed no further in that matter and on June 12, 1947 denied respondent Justice Holtzoff's petition for rehearing therein.

20. On May 29, 1947 in the case of *United States v. Eisler* (No. 9582, Ct. of Appeals, District of Columbia), the defendant Gerhart Eisler filed an affidavit alleging bias and prejudice on the part of the same Justice Holtzoff (see *Gerhart Eisler v. United States*, Court of Appeals, District of Columbia, No. 9582, Joint Appendix 222, 226). That affidavit recited in substance that Justice Holtzoff had, while legal advisor to the Federal Bureau of Investigation, participated in Federal Bureau of Investigation investigations of aliens and communists, including an investigation of the defendant therein who admitted that he was an alien communist. The affidavit also set forth Justice Holtzoff's al-

leged sponsoring of anti-communist legislation and his alleged friendship with and admiration for J. Edgar Hoover who was stated to have used highly intemperate language regarding communists.

21. The trial of that matter began on June 4, 1947 before the said Justice Holtzoff who found the affidavit of prejudice to be insufficient and refused to disqualify himself (Ibid, Joint Appendix 2-6). In the course of his opinion denying an affidavit of bias and prejudice in that matter Justice Holtzoff stated as follows:

"Moreover, the allegations relating to Communism are not germane to this action since Communism is not an issue. \* \* \* In fact, if opposition to Communism was a ground for disqualifying a judge, I dare say it would be a baffling problem to find a Federal Judge who is qualified to sit."

22. I have read the Joint Appendix before the Court of Appeals in *Gerhart Eisler v. United States* and I concluded that that record shows an intense personal hatred, bias and prejudice on the part of Justice Holtzoff against individual communists and, in particular, the defendant therein. Justice Holtzoff should be disqualified in my case not just because of his "opposition to Communism" in the abstract, but because his bias and prejudice, deriving from the background and experience already described in this affidavit, is so overwhelming that an individual communist, or an individual accused of being a communist or a communist sympathizer, on trial before him is unable to receive that fair trial guaranteed by our American system of justice.

23. I am convinced that since I am accused in this prosecution of having given perjurious testimony with respect to the question of whether I am or was a communist, and in the light of all the above mentioned facts, that Justice Holtzoff has and will have a personal bias and preju-

dice against me requiring his disqualification from sitting in my case.

24. In making my request that Justice Holtzoff be disqualified from sitting in my case, I am fully aware that I can file only one affidavit of bias and prejudice in this matter and that I will have no choice in the selection of any other judge.

I therefore respectfully request that Justice Holtzoff be disqualified from acting as the trial judge in this prosecution, and that another judge be assigned to this case in accordance with the appropriate acts of Congress and the rules of this Court to that effect.

The affidavit filed in this matter is timely, having been filed not less than ten days before the term of this Court begins on January 6, 1948.

Harold Christoffel.

Sworn to before me this  
22nd day of December, 1947.

Louis Kroll.

Louis Kroll.

Attorney and Counsellor-at-Law in the State of New York  
With Powers of a Notary Public  
P. O. Address 401 Broadway, N. Y. C. 13  
Residing in Kings County  
Kings Co. Clk's No. 44, Reg. No. A-573-K-9  
Certificate Filed in  
N. Y. Co. Clk's No. 907, Reg. No. A-854-K-9  
Commission Expires March 30, 1949.

*Certification of Counsel*

1272 I hereby certify that I am counsel of record in the above entitled case, and as such prepared the above affidavit at the request of the defendant Harold Roland Christoffel; that I am informed as to the proceedings there-

in and that such application and affidavit are made in good faith and not for the purpose of hindrance or delay.

O. John Rogge

O. John Rogge

Attorney for Defendant

c/o Rogge, Fabricant,

Gordon & Goldman

1700 Eye St. N. W.

Washington, D. C.

Republic 6471

401 Broadway

New York, N. Y.

Digby 9-1670

Dated: 23rd day of December, 1947

Service Acknowledged

Dec. 26th 1947

Frank H. Patton

Spl. Asst. to the

Attorney General

1273 Filed Jan. 5 1948 Harry M. Hull, Clerk

### Memorandum

The defendant Christoffel, acting pursuant to U. S. Code, Title 28, Sec. 25, has filed an affidavit of personal bias and prejudice. Such an affidavit is ineffective to disqualify the judge to whom it is directed unless it shows personal bias and prejudice on his part against the affiant as an individual. The statute does not apply to an impersonal general attitude derived from the judge's background, associations, and predilections.<sup>1</sup> The averments of bias and prejudice must be supported by detailed

<sup>1</sup> *Price v. Johnston* (S. C. A. 9th) 125 F. (2d) 806, 811; *Ryan v. United States* (C. C. A. 8th) 99 F. (2d) 864, 871; *Beecher v. Federal Land Bank* (C. C. A. 9th) 153 F. (2d) 987, 988.

facts and reasons that may be convincing to a reasonable man.<sup>2</sup> The Court is under the delicate and difficult duty of passing on the legal sufficiency of the affidavit.<sup>3</sup>

1274 The defendant alleges that I am antagonistic to Communism and, therefore, would be unable to give him a fair trial. I am indeed opposed to Communism. It is absurd to say, however, that because a judge is opposed to Communism he would be unable to accord a fair trial to the defendant, who is charged with perjury before a Congressional Committee in testifying that he is not a Communist.

The defendant further avers in his affidavit that he was associated with a society known as American Peace Mobilization and that while I was connected with the Department of Justice I had some contacts with an investigation of that organization as an alleged Communist front group. I recall that some years ago while I was a Special Assistant to the Attorney General, several official reports on the American Peace Mobilization passed over my desk in a routine manner and were examined by me. I do not remember whether the defendant's name was mentioned in any of them. Nevertheless, in view of the circumstances, I am certifying the case to Criminal Court No. 1 for reassignment to another judge.

ALEXANDER HOLTZOFF  
*Associate Justice.*

January 5, 1948.

1288

Wednesday, March 3, 1948

THE COURT RESUMES ITS SESSION PURSUANT TO ADJOURNMENT:

HON. EDWARD M. CURRAN, PRESIDING.

<sup>2</sup> *Berger v. United States*, 255 U. S. 22, 33; *Hurd v. Lotts*, 80 App. D. C. 233; *In re Lisman* (C. C. A. 2d) 89 F. (2d) 898.

<sup>3</sup> *Berger v. United States*, 255 U. S. 22, 36; *Price v. Johnston* (C. C. A. 9th) 125 F. (2d) 806, 811.



United States

vs.

Criminal No. 791-47

Harold Roland Christoffel

Come as well the Attorney of the United States, as the defendant in proper person, according to his recognizance, and by his attorneys, Messrs. O. John Rogge, Herbert J. Fabricant and Daniel Sobel; and thereupon the defendant's instructions coming on to be heard, after argument by the counsel, each is by the Court granted as to instructions 1 through 7, 10 through 13, 15, 21, 22, 24 through 28 and 30 through 42; and each is by the Court denied as to 8, 9, 14, 16 through 20, 23, 29, and 43; and thereupon each and every member of the jury is asked if that is his verdict and each and every member thereof says that the defendant is guilty in manner and form as charged in the indictment; whereupon the defendant is committed to the Washington Asylum and Jail; and thereupon the jury is discharged from further consideration in this case.

1289

Friday, March 5, 1948

THE COURT RESUMES ITS SESSION PURSUANT TO ADJOURNMENT:

HON. EDWARD M. CURRAN, PRESIDING

United States

vs.

Criminal No. 791-47

Harold R. Christoffel

Come as well the Attorney of the United States, as the defendant in proper person, in custody of the Superintendent of the Washington Asylum and Jail, and by his attorneys, Messrs. O. John Rogge, Herbert J. Fabricant, and Daniel Sobel; and thereupon the defendant's motion for a judgment of acquittal as to Count Two coming on to be heard, after argument by counsel is by the Court granted; whereupon the defendant's motion for a new trial, coming on to be heard, after argument by the coun-



sel is by the Court denied; and thereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him and he says nothing except as he has already said; whereupon it is considered by the Court that, for his said offense, the said defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) to Six (6) years; and thereupon the defendant is remanded to the Washington Asylum and Jail.

. . . . .

1290      Filed Mar 5, 1948      Harry M. Hull, Clerk

*Motion for New Trial*

The defendant, under Rule 33 of the Federal Rules of Civil Procedure, moves for a new trial or in the alternative for an acquittal on the following grounds:

*Defects Apparent on the Face of the Indictment*

1. That the indictment herein is fatally defective in that it fails to allege the existence of a quorum of the House Committee on Education and Labor at the time the oath was administered to the defendant and/or at the time the defendant gave the alleged perjurious testimony.
2. The indictment is fatally defective in that it is drawn under Section 22-2501, of the District of Columbia Criminal Code, whereas the allegations of the indictment reveal that the defendant testified before a Federal body, to wit: the Committee on Education and Labor of the House of Representatives of the 80th Congress of the United States, and that said testimony was given with respect to matters pertaining to the Federal Government and not with respect to matters affecting the local government of the District of Columbia.
3. The indictment is fatally defective for the reason that it appears upon the face of the said indictment that the oath was administered by the Chairman of the Committee

on Education and Labor of the House of Representatives of the 80th Congress of the United States, and said Chairman is not an officer authorized to administer the oath under the terms and provisions of the District of Columbia Code.

1291 4. The indictment is fatally defective in that it appears upon the face of said indictment that the questions to which perjurious answers were allegedly given were improper, impertinent, and not material to the subject under investigation as defined in Resolution No. 111.

### *Errors Committed in Advance of Trial*

5. Error was committed by the ruling of this Court which denied defendant's motion made under Rule 21 (a) of Federal Rules of Criminal Procedure for a transfer of the instant prosecution from the United States District Court for the District of Columbia to the United States Court for the Eastern District of Wisconsin, defendant having averred that he could not obtain a fair and impartial trial in the former District Court without presenting the testimony of many witnesses who resided in Milwaukee, Wisconsin, and the defendant having further averred that the witnesses were so numerous and resided at such a distance from the District of Columbia that he could not arrange for their presence at the trial of this indictment.

6. Error was committed by the ruling of this Court which denied the defendant's motions under Rules 17 (b) and 15 (a) of the Federal Rules of Criminal Procedure, said motions being for an order requiring the issuance of a subpoena to each of the witnesses named in a supporting affidavit thereto and for the payment of the costs of issuance and service of such subpoena, as well as the fees to said witnesses by the Government, or in the alternative for an order permitting the defendant to take the deposition of said witnesses in advance of trial.

### *Errors Committed on Trial*

7. This Court erred in ruling and instructing the jury that it was immaterial how many members of the Committee on Education and Labor were present at the time the oath was administered to the defendant and/or at the time that the defendant presented his testimony as long as a quorum of the said Committee was present at the opening of the afternoon session of said Committee on March 1, 1947.

8. This Court erred in denying a motion for a mistrial based on the unrefuted charge that the jury panel herein had been investigated on behalf of the Government by the Federal Bureau of Investigation.

9. This Court erred in denying a motion for a mistrial based on the calling of the witness Fred Blair by the Government at a time when the Government was advised that the said witness had claimed his privilege against self-incrimination before the grand jury which returned the indictment in this case and when the Government was likewise advised in advance of calling said witness that said witness would exercise his privilege if called to testify upon trial. The action of the Government in calling said witness under the circumstances hereinabove outlined was prejudicial to defendant herein.

10. This Court erred in denying the renewal of the motion for a mistrial based on the same grounds as those stated immediately hereinbefore in paragraph 9, and on the further ground that the Government withdrew the witness after said witness had been ordered to answer two questions. The withdrawal of the witness, under the circumstances outlined hereinabove, confirmed the prejudice inherent in calling said witness to the stand.

11. This Court erred in refusing to permit counsel for the defendant to read to the jury portions of the transcript of the defendant's testimony before the House Committee on Education and Labor, although said transcript was admitted into evidence over the objection of defendant.

12. This Court erred in refusing to charge as requested by defendant's request to charge No. 23, and in charging that the word "known" as used in Count 6 of the indictment herein meant merely "to recognize".

13. This Court erred in denying the defendant's motion under Rule 17 (b), the defendant having moved for 1293 an order requiring the Government to defray the costs of issuing and serving subpoenas on ten witnesses and the defendant having further alleged under oath that he was "indigent".

14. This Court erred in refusing to charge the jury as requested by the defendant in defendant's request to charge No. 43, and in charging that the defendant's testimony as matter of law was material to the investigation authorized by Resolution No. 111.

15. This Court erred in charging that the District of Columbia Criminal Code was applicable herein.

WHEREFORE, the defendant respectfully prays that this Court will grant this motion for a new trial or in the alternative for a verdict of acquittal.

Respectfully submitted,

ROGGE, FABRICANT, GORDON  
& GOLDMAN

Attorneys for Defendant

O. John Rogge

401 Broadway

New York 13, N. Y.

1700 Eye Street, N. W.

Washington 6, D. C.

1294 Filed Mar 5 1948 Harry M. Hull, Clerk

District Court of the United States for the  
District of Columbia

United States of America

vs. Criminal No. 791-47

Harold Roland Christoffel Sec. 22-2501, D. C. Crim. Code

*Notice of Appeal*

(Name and address of appellant)

Harold Roland Christoffel, 1306 N. 58th St., Milwaukee  
8, Wis.

(Name and address of appellant's attorney)

O. John Rogge, 1700 Eye Street, N. W., Wash. D. C.,  
401 Broadway, N. Y. City.

Offense Perjury

Date of judgment March 5, 1948

Brief description of judgment or sentence Two-six years  
in penitentiaryName of prison where now confined, if not on bail  
District Jail, District of ColumbiaI, the above-named appellant, hereby appeal to the Court  
of Appeals of the District of Columbia from the judgment  
above-mentioned on the grounds set forth below.

Harold Christoffel,

Appellant.

O. John Rogge

per HJF

Attorney for Appellant.

Date March 5, 1948

*Form of Clerk's Statement of Docket Entries to Be  
Forwarded Under Rule IV*(To accompany duplicate notice of appeal to the United  
States Circuit Court of Appeals)United States Court of Appeals for the District of  
ColumbiaB Filed March 5 1948 Joseph W. Stewart Clerk  
District Court of the United States

for the District of Columbia

United States of America

vs.

Harold Roland Christoffel



1. Indictment for Vio. Sec. 22-2501, D. C. Criminal Code, filed July 23, 1947
2. Arraignment August 5, 1947
3. Plea to indictment Plea Not Guilty, 3 weeks, etc. August 5, 1947
5. Trial by jury—February 16, 1948
6. Verdict or finding of Guilty as indicted. March 3, 1948
7. Judgment—(with terms of sentence) Two (2) years to Six (6) years. Entered March 5, 1948
8. Notice of appeal filed March 5, 1948  
Date March 5, 1948

Attest Harry M. Hull, Clerk

By: Margaret L. Boswell

Deputy Clerk

N. B.—This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules VII, VIII, and IX.

3

*Proceedings*

THE DEPUTY CLERK: The case of Harold Roland Christoffel.

(The jury panel was sworn.)

9 MR. PATTON: Mr. McArthur, come forward, please.

Mr. Smith.

10 THE COURT: Give their full names, please.

MR. PATTON: Your Honor, I don't have the full names on my list.

THE COURT: They may give them as they stand.

MR. PATTON: Congressman Hartley

Mr. Greathouse.

Mr. McStoul.

Mr. Clarke.

Mr. Rasen.

Mr. Blair.

Mr. Budenz.

Mr. Adelman.

Mr. Schnering.

Mr. Goff.

Mr. Benesch.

Mr. Blunk.

Mr. DeMint.

Mrs. Fisher.

Mrs. Merten.

Mr. Oswald.

Mr. Geres.

Mr. Haferkamp.

Mr. Rolli.

Mr. Witherspoon.

Mr. Zeltner.

11 Mrs. Fentress.

THE COURT: Does any member of the prospective panel know any of the witnesses whose names have just been called?

12 MR. ROGGE: May we approach the bench with Government counsel, Your Honor?

(Thereupon, counsel approached the bench and the following proceedings were had out of the hearing of the prospective jury.)

MR. ROGGE: I notice Government counsel have an additional set of pages with reference to the jurors, which apparently contain additional information. I am asking for a copy of that so that we may have the same benefit of the same information that the Government has.

THE COURT: That will be denied.

MR. ROGGE: I also want to make this observation, that this was raised as an objection in the Sedition Case and the Judge disqualified that panel and we started with a new panel. If it is true, as I think from the sheets that I see in the Government's possession, that they have had an F. B. I. investigation made of the jury; I raise that, if Your Honor please, as an objection to this panel and I refer to the action Chief Justice Eicher took in the Sedition Case where, as I say, he disqualified the panel, even though that had been done without any of the

13 members of the panel knowing anything about it, he nevertheless disqualified the panel.

THE COURT: Very well. That is denied.  
Let us proceed.

27 MR. PRATT: If Your Honor please, at this time I would like to direct the attention of the Court and the jury to the provisions of the Legislative Reorganization Act of 1946, calling attention particularly to Rule XI, that is Roman XI, (1), (g), and appearing on page 13 and page 15 of the printed copy of the Legislative Reorganization Act of 1946.

Of course, the Court knows of it, and I think perhaps I should explain to the jury that this Legislative Reorganization Act of 1946 was a reformation of the organization and function of various committees of the Senate and the House of Representatives.

This is Rule XI, and the important part is as follows: "All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively," and then going over to Subsection G on page 15: The Committee on Education and Labor.

This then describes in part the function of that Committee: Measures relating to education for labor gen-

erally; mediation and arbitration of labor disputes; wages and hours of labor; labor statistics, and labor standards.

MR. ROGGE: May I see that?

MR. PRATT: Yes, sir.

Now, if the Court please, the Government offers in evidence as Exhibit No. 1 certified copy of the Journal of the House of Representatives of the United States of January 14 and January 16, 1947, which gives the membership of the Committee on Education and Labor, including the designation of Mr. Hartley as Chairman of that Committee, and at the same time we offer as Exhibit No. 2 certified copy of House Resolution No. 111, in the House of Representatives of the United States, adopted on February 26, 1947.

This is Exhibit 1 and the other one is Exhibit 2.

MR. ROGGE: No objection, if the Court please.

THE COURT: They may be admitted.

(The documents above referred to were thereupon marked and received in evidence as Government Exhibits Nos. 1 and 2, respectively.)

MR. PRATT: Members of the jury, Exhibit No. 1 is a certified copy of the journal of the House of Representatives and reads as follows:

"I, John Andrews, Clerk of the House of Representatives, do hereby certify that the following Members constitute the Committee on Education and Labor of the House of Representatives, as is evidenced in the Journal of the House of Representatives of January 14, 1947, and January 16, 1947:

Fred A. Hartley, Jr., ~~Chairman~~, of New Jersey; Gerald W. Landis, of Indiana; Clare D. Hoffman, of Michigan; Edward O. McCowen, of Ohio; Max Schwabe, of Missouri.

Samuel K. McConnell, Jr., of Pennsylvania;  
Ralph W. Gwinn, of New York; Ellsworth B. Buck,  
of New York; Walter E. Brehm, of Ohio; Wint  
Smith, of Kansas; Charles J. Kersten, of Wisconsin;

"George MacKinnon, of Minnesota; Thomas L. Owens, of Illinois; Carroll D. Kearns, of Pennsylvania, Richard M. Nixon, of California;

"John Lesinsky, of Michigan; Graham A. Barden, of North Carolina; Augustine B. Kelley, of Pennsylvania; O. C. Fisher, of Texas;

"Adam C. Powell, Jr., of New York; John S. Wood, of Georgia; Ray J. Madden, of Indiana; Arthur G. Klein, of New York, John F. Kennedy, of Massachusetts; and Wingate H. Lucas, of Texas."

There were 25 members of the Committee.

Exhibit No 2 is a certified copy of Resolution No. 111 of the House of Representatives, adopted February 26, 1947. Without reading this exhibit, I will say that it is a resolution which gave the Committee of the House of Representatives power to hold meetings and subpoena witnesses and swear witnesses and in general to hold investigations.

Call Mr. McArthur.

Thereupon—

*Frank S. McArthur*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined  
30 and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Mr. McArthur, will you please state your full name?

A Frank S. McArthur.

Q Mr. McArthur, your home is here in Washington, is it not? A Temporarily; yes, sir.

Q What is your occupation? A I am on the—now?

Q Yes, now. A I am on the Committee for Education and Labor.

Q That is, you are an employee of the Committee?

A That is right.



Q And what was your position on March 1, 1947? A A member of the same Committee.

Q A member of the professional staff—is that what you call it? A That is right.

Q Do you recall a meeting of that Committee on the 1st day of March, 1947? A I do.

Q Did you attend that meeting? A I was there.

31 Q Where was it held? A In the Caucus Room of the Old House Building.

Q In the City of Washington? A That is right.

Q And did you act as clerk of that Committee? Did you? A I did.

Q Did you bring with you the Journal of the Committee as of that date? A I have it here with me.

Q Will you produce it, please? A This is the roll call.

Q Now, the book which you have produced here, Mr. McArthur, is that a part of the original official records of the House Committee on Education and Labor? A It is.

Q And who kept this book as of that date of March 1, 1947? A I did.

Q And these entries as of March 1, 1947, are they your official acts? A Yes, sir; that is right.

Q And in your statement of the occurrences before the Committee on March 1, 1947, have you stated what actually happened, who actually was present, and who  
32 were the witnesses on that date? A I did.

MR. ROGGE: I would like to find out who was present at what time. That is going to become material. The question is too general, if the Court please.

THE COURT: I thought he stated March 1, 1947.

MR. ROGGE: Yes, but it gets down to a particular hour when the defendant was sworn. That is what it gets down to. Who was there any other time does not matter. It is who was there when the defendant was sworn.

THE COURT: Very well. Suppose you fix the time.

BY MR. PRATT:

Q Now, Mr. McArthur, at what time did the Committee convene on that date? On the morning of that date, what time did the Committee convene? A Ten a. m.

Q And continued in session for how long? A Until lunch time, and then—

Q And does your record show what time you adjourned for lunch? A No, it doesn't.

Q There is no entry in that respect; is that right?

A That is right.

Q Does it show what time the Committee adjourned at the end of the day? A Five twenty-five p. m.

33 Q And it states then a certain situation, does it, as to what members of the Committee were present?

A That is right.

MR. ROGGE: Again, let us fix the time.

MR. PRATT: Wait a minute, Mr. Rogge.

BY MR. PRATT:

Q Does your record that you have before you show which of the members were present in the morning and which were present in the afternoon? A Not this record; it doesn't.

Q It does not? A No.

Q All right. I now direct your attention to two slips of paper which you have produced and which I would like to have marked for identification at this time.

(Two paper writings above referred to were thereupon marked Government Exhibits Nos. 3 and 4 for identification, respectively.)

BY MR. PRATT:

Q I will now direct your attention, Mr. McArthur, to a paper marked Government Exhibit No. 3 for identification. Will you state whether that is a paper from the original records of the Committee on Education and Labor? A It is for the morning of March 1, '47.

34 Q For the morning of March 1st? A Yes, sir.

Q And the notations on this printed slip and check marks, who put those there? A I did.

Q Now, does that slip of paper show who was present, the members of the Committee who were present on that morning?

MR. ROGGE: Just a moment, sir. At what time?

THE WITNESS: At the opening of the meeting.

BY MR. PRATT:

Q At the opening of the meeting? A Yes.

Q I now direct your attention to the paper marked Government Exhibit 4 for identification, and I will ask if you can identify that as one of the official regular records of the Committee on Education and Labor kept by you? A That is right.

Q And what does that represent? A That represents the people at the meeting in the afternoon.

Q And the check marks on the left—

MR. ROGGE (interposing): If the Court please, I hate to keep interrupting, but what time? The afternoon is a long time.

BY MR. PRATT:

35 Q I will ask that next. On the left-hand column you have check marks showing what members of the Committee were present, do you not? A That is right.

Q And when were the members thus checked present?

A I would say at 2 o'clock or whatever time the meeting was called.

Q That was the beginning of the afternoon session?

A That is right.

Q Now, will you read into the record the names of the members of the Committee who were present at the opening of the afternoon session?

MR. ROGGE: Is counsel going to offer this in evidence?

MR. PRATT: I am.

MR. ROGGE: I want a chance to examine on this, if the Court please.

THE COURT: Suppose you hand it to Mr. Rogge.

MR. PRATT: I have given him a copy, if the Court please.

THE COURT: He may want to see the original.

MR. PRATT: Well, it is a photostatic copy.

MR. ROGGE: I would like to examine on it, too, Judge, if I may.

MR. PRATT: I have asked him to read the names who were there at the beginning of the afternoon session.

THE COURT: After he sees the original.

MR. PRATT: Well, go ahead.

36 MR. ROGGE: I want to examine on the basis of it, Judge. I think he should tell us what is the purpose of this. If it is to refresh his recollection, it is one purpose. If this is going to be offered in evidence, I want a chance to cross examine him on the basis of it, and I also want to make the point, Your Honor, that who was present at 2 o'clock is not material in this case. It is who was present when Mr. Christoffel appeared, at close to 5 o'clock in the afternoon.

MR. PRATT: We will come to that.

THE COURT: Counsel offered the names of the Committee who were present at the beginning of the afternoon session.

I suppose he is going to offer it in evidence.

MR. ROGGE: But what he is having the witness do is to have the witness read from a document before he has offered it.

MR. PRATT: Well, in order to avoid that question, if the Court please, I now offer in evidence these Exhibits 3 and 4 for identification.

MR. ROGGE: May I examine on the basis of that?

THE COURT: Yes.

BY MR. ROGGE:

Q Mr. McArthur, Government Exhibit 4 for identification, shows, according to your testimony, the members who were there at 2 o'clock or whenever the Committee  
37 reconvened in the afternoon; is that right? A  
That is right.

Q Now, the members of this Committee went in and out of the room frequently after it convened, didn't they? A They probably did for telephone calls, and so forth.

Q Now, isn't it a fact that when Mr. Christoffel appeared before the Committee on that Saturday afternoon, it was in the neighborhood of 5 o'clock? A I don't think it was as late as that.

Q Well, would the printed record help to refresh your recollection?

THE COURT: The question before the Court now, Mr. Rogge, is whether the Court will admit this record as showing exactly what it is—that when the Committee convened for the afternoon session those members were present.

Is there any objection to that?

MR. ROGGE: Yes, there is, Judge. I say that the record as to what Committee members were present when the Committee reconvened—and I think just for the sake of correctness, it was 2:15 rather than 2 o'clock—is immaterial to this case because what we are interested in is what members were present at the time that Mr. Christoffel was alleged to have been sworn and at the time he gave the testimony which is alleged to have been  
38 perjurious, and the time of that occurrence.

THE COURT: The objection is overruled and Exhibits 3 and 4 are admitted.

(Thereupon the documents previously marked for identification Government Exhibit Nos. 3 and 4 were received in evidence.)

MR. PRATT: I understand these exhibits are received in evidence, Your Honor?

THE COURT: And you may read the exhibits to the jury.

MR. PRATT: Exhibit No. 3, members of the jury, is



this slip showing those present at the meeting on Saturday, March 1st, in the morning.

Present: Hartley, Chairman;

Hoffman, McCowen, Schwabe, McConnen, Gwinn, Brehm, Smith, Kersten, Owens;

Kearns, Nixon, Lesinsky, Kennedy, Lucas.

And Exhibit No. 4 in evidence gives the names of those who were present in the afternoon session.

MR. ROGGE: I object to that. That is an unfair statement. It was those who were present at the beginning of the session, Judge. Counsel says present at the afternoon session, and it is not true. They weren't there all afternoon.

I object to counsel's statement. That is unfair.

THE COURT: I think, Mr. Pratt, you referred to it as at the opening of the session before. That is that what you intended, the opening of the afternoon session, whether 2 or 2:15, and the following were present.

MR. PRATT: Those present at the opening of the afternoon session, according to this Exhibit 4, were:

Hartley, Chairman;

Hoffman, McCowen, Schwabe, Gwinn, Brehm, Smith, Kersten, Owens;

Kearns, Nixon, Lesinsky, Fisher, and Kennedy. They are 14 in number.

BY MR. PRATT:

Q Were you present at the time the defendant Christoffel was sworn by the Chairman? A I was.

Q Do you know how many members were present at that time? A No, I could not vouch for that, but I know—

MR. ROGGE (interposing): Just a moment. He said he doesn't know.

MR. PRATT: Let him continue.

THE WITNESS: I know they were pretty much interested in the case, and they probably—

MR. ROGGE (interposing): I object to that. That is not an answer, and I move it be stricken.

THE COURT: I will grant the request.

40

BY MR. PRATT:

Q At any time during that session, on that afternoon of March 1, 1947, did any member of the Committee suggest the lack of a quorum? A Not to my knowledge; no.

Q Now, the record which you have produced, the Journal for this 1st day of March, 1947, and which you have testified was the original regular record of the day's proceedings—

MR. PRATT: I now offer that in evidence, if the Court please, as Government Exhibit No. 5

MR. ROGGE: May I see that?

MR. PRATT: You have a copy of it.

MR. ROGGE: May I see the original, please, counsel? May I have a chance to question on it and object to it before it is marked in evidence?

THE COURT: Very well.

BY MR. ROGGE:

Q Now, this particular document shows who was present when the Committee met at 10 o'clock in the morning; is that right? A Well, this shows who were there during the afternoon and the morning.

Q You mean to say that this record here indicates that these people were here at all times during the day? A I would not say that.

41. Q As a matter of fact, these Committee members go in and out very frequently, don't they? A They get telephone calls, and they step out for a minute.

Q It is also true that Congress is frequently in session and they go in to answer roll call; don't they? A That is right.

Q And every time there is a quorum call in the House, most of them leave to answer a quorum call; isn't that right? A Yes; some of them leave and switch about.

Q Let me refresh your recollection, and tell me whether it is not a fact on those occasions most of them go off to answer quorum calls?

THE COURT: He said they did.

MR. ROGGE: I wanted the opportunity to show the occasions where most of them went out. I want to refresh his recollection on that. I don't think he answered the question about that, Your Honor.

MR. PRATT: That is not a proper question.

MR. ROGGE: It is a proper question. There wasn't a quorum and the evidence will show it.

MR. PRATT: On the other hand, there was a quorum, and the evidence will show that. I don't want to have any misunderstanding about that.

MR. ROGGE: Well, apparently we are having  
42 a misunderstanding.

THE COURT: Well, do you care to ask this witness whether or not there was a quorum present at the time the defendant testified before the Committee?

MR. ROGGE: Well, I am going to come to that on cross examination with this witness. I am going to ask him whether or not it is not a fact—I can do it now.

THE COURT: I do not know and I do not care if you do it now, Mr. Rogge. You must conduct your own cross examination as you see fit, but at the present time the only thing before the Court is this Exhibit No. 5 which the witness has testified is the original journal record of the Committee for March 1, 1947.

MR. ROGGE: Yes. The particular thing I wanted to bring out from the witness, which I think is a fact, is that it does not show who was present at the particular time in the afternoon when Mr. Christoffel was alleged to be there. I want to make the objection that therefore it has no materiality or relevancy in this case.

THE COURT: Is there any other objection to it?

MR. ROGGE: That will be my principal objection, Judge.

THE COURT: Very well; it may be admitted and you may have an exception.

(The document referred to was marked and received in evidence as Government Exhibit No. 5.)

43 MR. PRATT: Now, I want to read to the jury—

MR. ROGGE (interposing): Just a moment. I had one question on the quorum business.

THE COURT: I thought you were going to take that up on cross examination. That is what you told me.

MR. ROGGE: All right.

MR. PRATT: Your Honor, this is now in evidence as Government Exhibit No. 5, the journal entry of the Committee on Education and Labor. It reads:

"Saturday, March 1, 1947. The Committee met at 10 a.m., the Honorable Fred A. Hartley, Jr., Chairman, presiding.

"Present: Chairman Hartley; Congressmen Hoffman, McCowen, Schwabe, McConnell, Gwinn, Brehm;

"Smith, Kersten, Owens, Kearns, Nixon, Lesinsky, Kennedy, and Lucas.

"The following witnesses appeared: Mr. Robert Buse, president, Local 248, UAW, CIO;

"Mr. R. J. Thomas, vice president, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO; and

"Mr. Harold Christoffel, an official of Local No. 248, UAW, CIO, Milwaukee, Wisconsin.

"At 5:25 p.m. the Committee adjourned to reconvene at 9 a.m., Monday, March 3, 1947."

I think it is signed by W. Manly Sheppard, Clerk.

BY MR. PRATT:

44 Q Is that W. Manly Sheppard, Clerk? A That is right.

Q Mr. MacArthur, Mr. Sheppard is your superior there on that professional staff? A He is; that is right. He is the Clerk of the Committee.

Q Now, were you present at the time Mr. Christoffel was actually sworn? A Yes, sir, I was.

Q Do you know how many Committee members were present at that time?

MR. ROGGE: He already answered that he didn't know.

THE COURT: I do not recall that exact question that way. I will let him answer it.

MR. PRATT: Will you read the question?

(The pending question was read by the reporter.)

THE WITNESS: I could not say how many of those who were there at the opening of the meeting, and he was sworn,—

MR. ROGGE: The witness is speculating.

BY THE COURT:

Q The question is: At the time the defendant was sworn, do you know how many members of the Committee were present? A I could not say that.

THE COURT: All right.

45 BY MR. PRATT:

Q Were you present when he testified? A I was.

Q Do you know how many members of the Committee were present when he testified? A No, I could not say that.

MR. PRATT: If the Court please, I would like to substitute photostats for these exhibits 3, 4, and 5.

MR. ROGGE: No objection to that.

MR. PRATT: Will you let me have them, then?

MR. ROGGE: I notice that counsel has photostats. Does he have extra copies of any of these?

MR. PRATT: No, I haven't. I am sorry.

THE COURT: They will be made available to you, Mr. Rogge. The Clerk will handle the exhibits.

MR. PRATT: This is 3, and this is 4, and this is 5. Now, may these original exhibits be returned to Mr. McArthur, the witness?



THE COURT: They may.

MR. ROGGE: I take it I am to cross examine on the basis of the originals, and I have agreed to the substitution of the photostats.

THE COURT: Very well.

Are you through, Mr. Pratt?

46 MR. PRATT: Yes, Your Honor.

\* \* \* \* \*

*Cross-Examination*

50 BY MR. ROGGE:

Q Will you turn again, Mr. McArthur, to the page as to which you testified yesterday?

Now, who dictated this material that is signed W. Manly Sheppard? A Probably Mr. Sheppard.

Q Do you know who dictated it? A I am not quite sure, no. I probably gave him a memorandum of who was there?

MR. PRATT: Louder, please.

THE WITNESS: I gave him the names of people who were there.

BY MR. ROGGE:

Q What do you mean when you say you gave him the names of people; you gave him the slips? A That is right.

Q Which have been marked Exhibits 3 and 4, is that right? A That is right.

Q And he put—if he dictated it, and you are not sure he did dictate it, but if he did dictate it, he dictated it using these sheets which are marked 3 and 4? A That is right.

Q Now these sheets you made up, you testified; is that correct? A That is right.

Q And you made up these sheets at what particular time; the one in the A. M. was made up when, somewhere about the time the Committee convened? A That is right.

Q As a matter of fact, isn't it true that sometimes those sheets weren't made up until, oh, ten or fifteen minutes after the Committee convened, because there were very many members that were usually a little bit late? A I wouldn't say that, ten or fifteen minutes, probably a minute or so.

Q Five or ten minutes? A I wouldn't say five or ten minutes.

Q In other words, you made up your tally sheet at the time when the greatest number of Committee members were present? A No, I didn't. I made it as they entered before the meeting.

Q Or after the meeting? A Just after the meeting started.

Q Just after the meeting started. You have already told me— A A minute or so, maybe. I can't say that wouldn't happen.

Q Did you call the roll? A No, I didn't.

Q You didn't say, "Mr. Hartley," and he said "Present?" A No, I didn't.

Q You looked about the room and then made up that sheet, is that right? A As the men took their seats, I marked them present.

Q You will notice on here, on this tally sheet which has been marked 3, which you made up shortly after 10 a. m. on Saturday morning, March 1, you will notice on there that you have Fisher marked as absent, don't you? A That is right.

Q On the other hand, when you came, or whoever came to dictate, and, incidentally, you didn't dictate Government Exhibit 5 yourself, did you? A I am not sure whether I did or not.

Q When you came to dictate that it reads the Committee met at 10:00 a. m., "Present," and you list Fisher, when on this Government's Exhibit 3 Fisher is marked as absent. A Fisher probably came in in the afternoon and I marked him present, and this was made up from both sheets.

Q In other words, this Government Exhibit 5 doesn't reflect those who were present at any particular time, that reflects those who were present at any time during the day?

A No, I wouldn't say that.

Well, then, how do you account for the fact that Fisher is marked absent on A. M. and yet is marked present on Government's Exhibit 5? A This other sheet, is he marked present on this other sheet?

Q Yes, but for the afternoon. A That is what it was made up from.

Q It was made up from both, wasn't it? A That is right, and the minutes.

Q In other words, these minutes do not reflect who was there at 10 A. M.? That is correct, isn't it? A It reflects who was there at 10 A. M. and at the opening of the afternoon session.

Q And you have lumped those together? A That is right, in the minutes.

Q Then, to answer my question, this listing here under the designation "The Committee met at 10 A. M.," and then

a bunch of names, that doesn't mean all those people were there at 10 o'clock, does it? A No, it doesn't.

Q Now, Government's Exhibit 5, what is that supposed to reflect, the important thing that happened during the day? A That is right.

Q If there were an executive session that the Committee went into, those minutes would reflect it, wouldn't they?

A That is right, because there wouldn't be any stenographer there to take things down, other than it was going to be printed. We just outline in these minutes here, because we know they are all going to be printed, and have been taken by a reporter.

Q But your answer is so long that I am not sure I follow all of it. Is it correct when you had events like the Committee going into executive session that would be reflected in the minutes which you have labeled here as Government's Exhibit 5? A Those minutes would be taken

more carefully, more in detail. This isn't in detail. This is just the rough outline of what happened during the day, because, as I say, the minutes were all printed.

Q "If this is to reflect anything, it reflects important events that happened during the day; doesn't it? A 55 That is true.

Q So I am asking you if the Committee went into executive session would that be reflected in this document which is Government's Exhibit 5? A It wouldn't be reflected in this document. It would at an executive session. The executive session would be the true—when they were there—it wouldn't be a double two day, morning and afternoon session, on that.

Q Suppose you have the Committee meeting on March 1, and there is a full Committee, and hears witnesses, and then at some point during the day this Committee says, "We move to go into executive session." Is that such an event that it would be reflected? A It would be reflected in here that the Committee went into executive session.

Q That is what I am asking you. A Yes.

Q Now, then, look at this. Is there any reflection there that on March 1 the Committee did go into executive session? A No, there is not.

Q Now, to refresh your recollection, I call your attention to page 2100 of the printed hearings, and I ask you whether it is not the fact, and you examine this at any place you wish, whether it isn't a fact that in the 56 afternoon of March 1 that Committee did go into executive session? A Yes.

Q But you failed to reflect that in Government's Exhibit 5, didn't you? Just answer my question. A I wasn't a Committee member of the executive session. I didn't keep any tabulation of the executive session because I wasn't then in the executive session.

Q Mr. McArthur, didn't I understand you to say a moment ago when the Committee under those circumstances went into executive session, the fact that they did

se would be reflected here? A Well, that should be.

Q But it isn't in this instance, is it? A According to that it is not, no.

Q Now, wasn't it also the custom to reflect in these documents when the Committee recessed at any other time, for lunch or things like that? A Sometimes it does, yes.

It is according to who writes the minutes.

Q And you said you don't know who wrote those minutes? A I am not sure.

Q Isn't it a fact, and, by the way, these minutes here, Government's exhibit 5, do not reflect any adjournment for lunch, do they? A It doesn't show it, no.

57 Q Calling your attention to pages 2220 and 2221 to refresh your recollection, isn't it a fact that at one p. m. the Committee did adjourn and met again at 2:15 p. m. or thereabouts? A That is right.

Q Now, you were mentioning yesterday something about 2:00 o'clock. Just to have the record straight, on March 1, Saturday afternoon, the Committee reconvened at 2:15 p. m., is that correct? A That is right.

Q And it was at 2:15 p. m. or shortly thereafter, maybe as much as ten or fifteen minutes thereafter, that you made up the sheet which is Government's Exhibit 4? A That is right—not fifteen minutes after. I would say two or three minutes after.

Q Let us observe another thing on here. These minutes reflect that the—at 5:25 p. m., that is Saturday afternoon, the Committee adjourned to reconvene at 9:00 a. m. Monday morning; is that right? A That is what it says there, yes.

Q The usual meeting time of that Committee was when? A Usually 10 o'clock.

Q Now, when you look at the minutes for Monday, and it is on the same page, it says the Committee met at 9 a. m.; is that correct? That is what the minutes

58 say? A It should be—

Q I am asking is that what the minutes say? A I can't remember. That is what it says, 9 a. m.



Q That is what the minutes say? A That is right.

Q Let us look, to refresh your recollection, at page 2103 of the printed record for Monday, March 3. Isn't it a fact that the time that the Committee actually met was 10 o'clock, rather than 9 o'clock? A According to this it says 10 o'clock. I know the meeting was called at 9 o'clock, and it was entered in our minutes at 9 o'clock.

Q In other words, what the person did who dictated the minutes for March 3, he simply looked at the minutes for March 1 and saw that the Committee was to reconvene at 9, and without going further dictated that the Committee did meet at 9, whereas, as a matter of fact, the Committee met at 10; is that right? A I wouldn't say that, either.

Q There is an hour's discrepancy there. A Sure, and I say there can be an hour's discrepancy if a witness doesn't show up, if we met at 9 and have to wait until 10, the stenographer says we started at 10 o'clock. That is when he started. I started at 9.

Q I am asking you at what time did the Committee reconvene on March 3rd? A I am not sure. My minutes say 9. He says 10.

Q Who dictated the minutes for March 3? A I am not sure whether I did it or not.

Q Do you know who dictated it? A No, I am not sure. Probably Mr. Sheppard or myself, either one. I gave him all the data and he dictated it, or I did the job.

Q And isn't it a fact that when you were putting the 9 a. m. in that you looked back to March 1 and didn't—and overlooked the fact the Committee didn't really meet until 10 o'clock. A I wouldn't say any such thing, no.

Q There is an hour's discrepancy, however? A It seems so, but we will be waiting there an hour before the witness shows up. I don't know whether the witnesses were late or what that morning.

Q Don't you know as a matter of fact Mr. Christoffel was there at 9 o'clock and waited until the Committee got

there? Don't you know that is a fact? A No, I don't know, because, in fact, I know they were looking for him.

Q You don't deny it? A I don't deny it, no.

Q This is Monday. I am not talking about Saturday. He was sick Saturday morning, and wasn't there in the morning. A That is right.

Q And on Monday morning he was there at 9 o'clock, wasn't he? A I don't know whether he was or not. I suppose he was.

Q The Committee itself didn't meet until 10 o'clock? A I wouldn't say it did.

Q The members didn't get there until 10, because that was their usual convening time? A No, 9 o'clock, which is a special meeting this morning.

Q Do you make any notation at any particular time at what time the Committee reconvenes? Do you have any sheet for that? A No, I don't.

Q How do you know whether the Committee met at 9 or 10? A Well, because we make—I write up my minutes right after the meeting, and I know.

Q Yes, but I am asking you now isn't it a fact on Monday morning Mr. Christoffel was there at 9, that the Committee wasn't? A I don't know about that.

Q Then you can't explain the hour's discrepancy? A There is nothing to explain.

Q There is an hour's discrepancy, isn't there? A It is an hour according to when he started to take dictation, yes.

Q Now, let us fix the time when Mr. Christoffel appeared on Saturday afternoon, March 1. The first thing that occurred on Saturday afternoon—we will use this to refresh your recollection—is that Mr. Robert Buse, who had been on the stand in the morning was still on the stand in the afternoon. A Yes, I think that I remember that, yes.

Q Well, if you don't remember it, would you refer to this here to refresh your recollection, this page—from page 2021 to page 2049? A Yes, his testimony was resumed.

Q Now, the Committee met at 2:15, and Mr. Buse was on for a half to three-fourths of an hour, wasn't he, in the afternoon? A He was on the stand. I don't recall just how long.

Q And Mr. Buse was followed by Mr. Thomas? A That is right. Mr. Thomas wasn't scheduled, I don't believe, if I remember right.

Q Whether he was or wasn't, the next witness— A I don't think he was a scheduled witness, he was taking the place of Mr. Christoffel. I am only depending on my memory now. I mean he wanted to read the statement for Mr. Christoffel, I think, if I understand.

Q I am asking you as a fact, Mr. McArthur, whether in the afternoon after Mr. Buse had testified half or three-quarters of an hour, the next witness was R. J. Thomas? Isn't that a fact? A Yes, because Mr.—

Q I am not asking you for an explanation. I am simply asking you whether that isn't a fact. A He was the next witness, and an uninvited witness, if I remember right.

Q You mean to say that this witness could show up here at the Committee on Education and Labor and tell Chairman Hartley how to run that Committee? A No, No, I wouldn't say that.

Q As a matter of fact, no witness appeared there unless he was invited to appear; isn't that right? A That may have happened, yes.

Q Isn't it a fact that Mr. Thomas made a statement which lasted for over an hour and then there was considerable questioning, and you may again refer to these pages to refresh your recollection.

MR. PRATT: I object to that. It is certainly absolutely impossible for this witness to read this transcript and state how long that testimony took.

63 MR. ROGGE: It states in the testimony itself, Your Honor, and I can show it to you; this witness was

there all the time taking roll, so he says, and if this will indicate to him how long this took, I think he is entitled to state.

THE COURT: Very well.

BY MR. ROGGE:

Q Calling your attention here to page 2062, I ask you whether it isn't a fact that Mr. Thomas made a statement which lasted for over an hour? A I wouldn't know.

Q I ask you whether it isn't a fact Mr. Thomas made a statement? A That is true. He did.

Q And then there was considerable questioning of Mr. Thomas by various members of the Committee; do you recall that? A Yes.

Q And it was only after that that Mr. Christoffel appeared before that Committee? A That is right.

Q Which means that Mr. Christoffel did not appear before the Committee until about 4:30 in the afternoon? A I don't know what time he appeared.

Q Well, now, you were there, Mr. McArthur. A I certainly was, yes.

64 Q And we have already gotten the fact that Mr. Buse was there first, haven't we? A That is right.

Q And we have also gotten the fact that he was followed by Mr. Thomas? A That is right.

Q And after Mr. Thomas had made a statement, didn't Mr. Hoffman make a statement that he talked for over an hour? Don't you recall that? A No, I don't recall that.

Q And then after all that took place, there was still further questioning? A According to the testimony there was, yes.

Q You doubt the correctness— A No, I don't.

Q Then Mr. Christoffel made a statement? A That is right.

Q And then there was some questioning of Mr. Christoffel by Mr. Hoffman? A That is right.

Q Now, calling your attention to page 2101, the Committee adjourned that day at 5:25 p. m., didn't it? A That is right.

Q And specifically calling your attention to the questions and answers on page 2094, isn't it fact that 65 that occurred shortly before adjournment time, so that those questions and answers took place at some time between 4:30 and 5 o'clock in the afternoon, or thereabouts? A I couldn't say any specific time.

Q Approximately, Mr. McArthur. A Well, an approximate time—

MR. PRATT: That wouldn't prove anything. Speak a little louder, Mr. McArthur, please.

THE WITNESS: Approximately, I can't guess how—I will say yes and let it go now, if it will prove anything.

BY MR. ROGGE:

Q You are here to prove various things, Mr. McArthur. A A man gives ten pages of testimony in an hour; it would take two hours for some other man to give the same testimony.

Q You have been with this Committee a long time? A I certainly have.

Q And you can look through here and form an estimate as to about how long that much took? It would take about a half an hour, wouldn't it? A I couldn't say.

Q How long have you been with the Committee on Education and Labor? A Over a year.

Q You mean to say you couldn't look at those 66 pages 2094 to 2101— A It is all according to who is giving the testimony and who is asking it— asking the questions.

Q The questions seemed to be asked rather quickly, and answered that way? A Sometimes—no, they weren't answered quickly. I know that. There was a lot of consultation and everything else in between each question.

Q You mean to say that would take place and not be reflected in the record or cause objection by anyone? A I don't find any objection in there.



Q You can look through it. I didn't find any. A It would take too long to look all the way through the testimony.

Q All I am asking from you is a single statement. That is all I am trying to get. A When you ask me how long a man would take to give this, it is like setting type. I can set it in an hour, someone else takes two hours to set the same thing. That doesn't prove anything.

Q I am simply basing this on your experience with this Committee of a year. A I am giving my experience.

Q I think by looking at page 2094, as a matter  
67 of fact, only seven pages there, I think you would be able to tell us that approximate—

MR. PRATT: I object. It is argumentative and improper.

THE COURT: Just a minute. I will sustain the objection.

BY MR. ROGGE:

Q And is it a fact, Mr. McArthur, that at the time when the Committee adjourned at 5:25 p. m., and for refreshing your recollection I will ask you to look at page 2100 and 2101, whether it wasn't a fact at that time on Saturday afternoon there were only four or five members of that Committee present? A I wouldn't say that. You mean this testimony shows only those that questioned him.

Q Well, now, let us just go into that. Let us just establish who was there by referring to the regular procedure of this Committee. You are familiar with the regular procedure of this Committee? A That is true.

Q Chairman Hartley sat in the middle. A That is right.

Q And then the Republican members of the Committee were arranged to his right in the order of seniority? A That is right.

Q And there were places thus arranged according to that schedule of seniority, and do you need to re-

68 fresh your recollection on that? A On what?

Q On the order of seniority, the order in which there were places for them? A I think I remember it pretty well.

Q The first one to Mr. Hartley's right was Congressman Landis? A Yes, he wasn't there.

Q He wasn't there? A That is right.

Q But I mean there was a place for him? A That is right.

Q And then there was a place for Congressman Hoffman? A That is right.

Q And then there was a place for Congressman McCowen? A That is right.

Q And then there was a place for Congressman Schwabe? A That is right.

Q And then there was a place for Congressman McConnell? A Yes.

Q And then there was a place for Congressman Gwinn? A That is right.

Q And then there was a place for Congressman Buck? A Right.

Q And then there was a place for Congressman Brehm? A Right.

Q And then for Congressman Wint Smith? A That is right.

Q And then Congressman Kersten? A Yes.

Q Congressman MacKinnon? A Yes.

Q Congressman Owens? A Yes.

Q Congressman Kearns? A Yes.

Q Then Congressman Nixon? A Right.

Q Then we start on the Democratic side, A Right.

Q They were arranged on the left in the order of seniority? A That is right.

Q And there was a place for Congressman Lesinsky? A Yes.

Q Then for Congressman Barden? A Yes.

Q And then for Congressman Kelley? A Yes.

70 Q And then for Congressman Fisher? A Yes.

Q And then for Congressman Powell? A Yes.

Q And then for Congressman Wood? A Yes.

Q And then Congressman Madden? A Yes.

Q And then Congressman Klein? A Yes.

Q And then Congressman Kennedy? A Yes.

Q And then Congressman Lucas? A Yes.

Q And then in the line of regular procedure of that Committee, after a witness had given his statement the Chairman would call upon in the line of seniority first those on the Republican side and then on the Democratic side; isn't that correct? A That is the usual procedure.

Q That was the regular procedure, and if Congressman Landis wasn't there, then the first one that the Chairman would call upon was Congressman Hoffman? A That is right.

Q And if neither Landis nor Hoffman was there, the first one that the Chairman would call upon was  
71 Congressman McCowen? A Ordinarily, yes.

Q I am asking the regular procedure. A I say ordinarily that is the procedure.

Q Now, if Congressman Hoffman was there, and Congressman McCowen was absent—how does Schwabe pronounce his name? A S-c-h-w-a-b-e.

Q Schwabe? A That is right.

Q The Chairman in the regular order would call upon Congressman Hoffman and then would go to the next man, Congressman Schwabe? A That is the usual procedure.

Q So that if the usual procedure was followed, if the Chairman called upon Congressman Hoffman and then Congressman Schwabe it would indicate Congressman McCowen was not there? A Not necessarily.

Q Well, now, isn't it a fact that Congressman Hartley was very meticulous about calling upon all the people, all the members of the Committee who were there to ask questions? A That is a usual procedure, yes.

Q And either they asked questions, and when they finished asking questions they indicated that they were through, either by saying "That is all," or by thanking the witness, and then Chairman Hartley would go on to the next one in line of seniority? A That occurs most of the time.

Q On the other hand, if they had no questions, they would answer "No questions." A That is oftentimes the procedure.

Q And many times there were a number who would answer "No questions," but they would be called? A That happens often, yes.

Q As a matter of fact, if you will refer to page 1893 to refresh your recollection, of this volume, you will see an instance there where the Chairman called in turn upon Congressman McConnell, Congressman Smith, Congressman Kearns and Congressman Nixon and they all said they had no questions.

MR. PRATT: What page are you referring to?

MR. ROGGE: 1893.

THE WITNESS: That is another meeting.

BY MR. ROGGE:

Q That is correct. It is this Committee through, isn't it? A That is right.

Q I am trying to get the procedure of this Committee, and if you will look at page 1903 you will see that he called—the Chairman called first upon Congressman Hoffman, who said, "No questions"; then Congressman Nixon, "No questions"; Congressman McCowen, "No questions." He called upon three in turn there, and they said they had no questions. A That is true.

MR. PRATT: I object, if the Court please. This doesn't even refer to the time when Christoffel was there.

MR. ROGGE: I am just trying to establish the regular procedure of this Committee, if the Court please, because it will show affirmatively who was present.

MR. PRATT: The question is what occurred on that day, not what might have occurred on some other day. I object to it.

THE COURT: I sustain the objection.

I think, Mr. Rogge, the Court understands what your purpose is, but I think it should be directed to March 1.

MR. ROGGE: I am just trying to establish—what I wanted to do with this first was to establish the procedure of the Committee, and then I am coming to the witness who preceded Mr. Christoffel, Mr. Thomas.

BY MR. ROGGE:

Q Isn't it also a fact on this first time around each man had ten minutes, that is, what they call the first time around the Committee? A I don't recall whether that was set or not.

Q Well, now, I call your attention, for the purpose of refreshing your recollection—let us look at page 2062, for instance, or you can refer again, if you wish to refer to another instance, you may refer to 1634. A I say I don't recall the Chairman allotting any specific time. Oftentimes he does it, but I don't know whether he did that day or not.

Q I am asking whether— A (Interposing) This statement was made by Mr. Hoffman, he was allowed ten minutes. I don't recall that the Chairman said anything about ten minutes or five.

Q I call your attention here to 1634.

MR. PRATT: Page what?

MR. ROGGE: 1634.

MR. PRATT: I have no such page.

MR. ROGGE: You have it in another volume, Mr. Pratt.

BY MR. ROGGE:

Q What I am trying to get at, Mr. McArthur, is the general procedure. A Ten minutes is not a general procedure at all. Mr. Hoffman makes this statement. I don't know whether the Chairman allotted only ten min-



utes or not. I don't know if it shows in the record whether he did or not.

Q I am asking you whether it is not the fact on the first time around first the Republican members in the line of seniority and then the Democratic members in the line of seniority, whether on this first time around they didn't have ten minutes apiece? A No, that is not the general custom.

Q There was a first time around, wasn't there? A That is right.

Q And then there was a second time around to see whether members had additional questions? A That is true.

Q And this procedure was sufficiently set so that if one member of the Committee wanted to break in upon another member's time he said "Will the gentleman yield?" A That is true.

Q And if the gentleman didn't yield, he didn't interrupt; that is correct? A That is true. Sometimes that has happened the other way, though.

Q Now, it is also true that Committee members—strike that.

On this first time around the Chairman called upon all the members who were there, and they either questioned or they said they had no questions; that is the regular procedure, isn't it? A That is ordinarily the regular procedure, yes.

Q In other words, in effect with each new witness you would have what amounted to a roll call of the Committee, in effect? A In effect.

Q Now, if there were 12 members of the Committee present on any particular occasion, and if they each had ten minutes for questioning, that would add up to two hours, wouldn't it?

MR. PRATT: I object.

THE COURT: Sustained.

MR. ROGGE: I wanted to show how that is the maximum number that could have been there.

MR. PRATT: It is highly argumentative.

THE COURT: I have sustained the objection.

BY MR. ROGGE:

Q Now, it is also true that during this questioning Committee members would go in and out, wouldn't they?

A They were often called on the telephone, and so forth, clerks from their office coming down to carry messages to them, they stepped outside for a moment.

Q Let me ask you this, Mr. McArthur, isn't it a fact that at the same time these committee hearings were going on Congress was also in session and that members of the Committee went to answer quorum calls and also to vote?

A They often do that. I don't believe Congress met that morning.

THE COURT: This was Saturday afternoon.

77 THE WITNESS: Saturday, yes.

BY MR. ROGGE:

Q Yes, but— A (Interposing) I don't think Congress was in session.

Q I am asking you first as to general procedure, Mr. McArthur.

MR. PRATT: I object to that.

THE COURT: Sustained.

BY MR. ROGGE:

Q Now, isn't it also true, Mr. McArthur, that the members of the Committee on Education and Labor were also members of other committees which met very often at the same time that this Committee was meeting? A There are one or two members of the Labor Committee that are members of other committees, standing committees.

Q Now, let us—one other thing before I get to that.

If the Chairman was not present, then the next Republican member present in the order of seniority would take the chair? A That is true.

Q So that if the Chairman was absent and Congressman Landis was present, Congressman Landis took the chair? A That is right.

MR. PRATT: I object to these hypothetical questions, if the Court please. I believe this should be confined to the inquiry in relation to that particular day.

THE COURT: I think so—

MR. ROGGE: If the Court please, I am just trying to establish regular procedure, and it also applied on Saturday, I assume.

THE COURT: That didn't mean that it was followed on Saturday.

MR. ROGGE: Let me ask a question.

BY MR. ROGGE:

Q Was Saturday a day on which regular procedure was not followed, Mr. McArthur? A Well, I should say that on important meetings like that men that are mostly interested in certain phases of labor and the different things that were happening would be the men that would ordinarily demand a hearing; for instance, now—

MR. ROGGE: Just a minute.

MR. PRATT: Just a minute.

MR. ROGGE: This is not responsive to my question. I asked this witness whether it isn't a fact that the Committee followed its regular procedure on Saturday and he proceeds to give me an explanation.

THE COURT: That is not a proper question, either. It is not what the regular procedure was on Saturday or what the regular procedure was any other day. It is what actually happened on Saturday. That is the basis of the Government's objection. I think you should frame your questions, Mr. Rogge, to bring out exactly what took place on Saturday afternoon, the date of this alleged offense, at which time the defendant was supposed to have testified.

MR. ROGGE: Well, what I am trying to do, what I am coming to, Judge—

THE COURT: I understand that.

MR. ROGGE: There was a regular procedure.

THE COURT: But that—

MR. ROGGE: And if it was followed on Saturday, as I am sure it was, it would indicate who was present.

THE COURT: Why don't you ask him who was present?

MR. ROGGE: He has already said he didn't know, but I want to refresh his recollection.

MR. PRATT: I object to that.

THE COURT: You can't prove who was present by proving what the regular procedure of the Committee was.

MR. ROGGE: Now, may it please the Court, I would like to be heard on this for a second.

THE COURT: I have already ruled, Mr. Rogge. You may have your exception.

BY MR. ROGGE:

Q Now, let us come to Saturday morning, Mr. 80 McArthur, and let us take the tally sheet for Saturday morning. That tally sheet for Saturday morning shows Congressman Brehm present, doesn't it? A That is right.

Q Now, I will ask you to refer to these sheets showing the examination of Mr. Buse.

Now, the first one the Chairman called upon was Congressman Hoffman. A Yes.

Q That indicates Congressman Landis wasn't there, doesn't it? A Ordinarily, yes.

MR. PRATT: Again I object to that, if the Court please.

THE COURT: Sustained.

MR. ROGGE: If the Court please—

MR. PRATT: It is a matter—

THE COURT: I sustain the objection, Mr. Rogge. You may have your exception.

Let us assume, for the sake of argument, that on Saturday afternoon at the time that the defendant was present that the Chairman overlooked two or three members of the Committee and did not ask them if they wanted to say anything. Do you expect to prove by the regular order of procedure ipso facto therefore they weren't there, and

81 I think it is your duty to show, and I understand exactly what you are trying to do, but it isn't what the regular procedure was before this Committee, it is what actually happened on the afternoon of March 1.

MR. ROGGE: May I call this to the Court's attention? They introduced these tally sheets, which really don't mean anything.

THE COURT: You can ask him any question you want about those tally sheets, whether or not those they checked as present were present or weren't present, or if you have any other evidence to show they weren't there; but not by reason of a course of conduct that the Committee went through on prior occasions.

BY MR. ROGGE:

Q Let me ask you this. Calling your attention to this tally sheet, which is Government's Exhibit 3, and to page 1097, and I ask you whether it wasn't a fact that on the examination of Buse Congressman Landis was not present? A Well, my tally sheet shows that.

Q Well, now, the next one that the Chairman called upon after calling upon Congressman Hoffman was Congressman McCowen, wasn't it? A That is right.

Q And after calling upon Congressman McCowen he called on Congressman Schwabe who had no questions?

A That is right.

82 Q And after calling upon Congressman Schwabe he called upon Congressman McConnell? A That is right.



MR. PRATT: I object to that. You are not talking about the afternoon session, I take it.

MR. ROGGE: The tally sheets were introduced for the morning session, if the Court please.

THE COURT: He has answered.

BY MR. ROGGE:

Q And after calling upon Congressman McConnell—

MR. PRATT: That assumes something that the record does not support, and I object to it. The tally sheet shows McConnell was not present.

MR. ROGGE: It just shows how incorrect these tally sheets are.

MR. PRATT: In the afternoon.

MR. ROGGE: That is my objection to the tally sheets.

THE WITNESS: You are talking about the afternoon? In the morning he was there.

BY MR. ROGGE:

Q This is the morning? A That is right.

Q And you have marked him absent for the morning, haven't you? A No, I haven't.

83 MR. ROGGE: The witness and I are getting along here, Judge.

THE WITNESS: He is talking about the afternoon.

BY MR. ROGGE:

Q We are talking about the morning? A Yes.

MR. PRATT: In the afternoon Congressman McConnell was not there?

MR. ROGGE: Do not interrupt my cross-examination.

MR. PRATT: If the record shows the tally sheet—

THE COURT: You introduced the morning tally sheet.

MR. PRATT: Very well. He is talking about the afternoon.

THE COURT: No, he is not.

MR. ROGGE: I am not.

MR. PRATT: All right.

BY MR. ROGGE:

Q Now, calling your attention here to page 1986, after calling upon Congressman McConnell the Chairman called upon Congressman Smith, is that correct? A According to the record, yes.

Q And isn't it a fact that at that point of time neither Congressman Gwinn nor Congressman Brehm were any longer present? A I wouldn't say necessarily so, no.

Q Do you know? I don't know; no.

84 Q Now, let us look at the afternoon session.

Now, the witness who immediately preceded Mr. Christoffel was Mr. Thomas; that is correct, isn't it? A That is right.

Q And on Mr. Thomas there was one of these go-arounds, one of these roll calls, in effect? A That is right.

Q And with reference to Mr. Thomas the first one the Chairman called upon was Congressman Hoffman? A Right.

Q Congressman Landis wasn't there and your sheets indicate he wasn't there? A That is right.

Q And after Congressman Hoffman, the Chairman called upon Mr. McCowen who had no questions? A That is right.

Q Right? And thereafter the Chairman called upon Congressman Brehm? A Right.

Q In other words, Congressman Schwabe and Congressman Gwinn who were shown on your tally sheet to have been there at 2:15 p. m. were no longer there? A I wouldn't say that, either.

Q Do you know? A I don't know.

85 Q And after calling upon Brehm, Congressman Brehm, the Chairman called upon Congressman Kersten; right? A That is right.

Q And after that he called upon Congressman Owens? A That is right.

Q And after that upon Congressman Kearns? A Yes.

Q After that upon Congressman Nixon? A Yes.

Q And after that upon Congressman Lesinsky? A Yes.

Q And after that upon Congressman Fisher? A That is right.

Q And after Congressman Fisher, upon Congressman Kennedy? A That is right.

Q So isn't it a fact that at the time of this go-around there were only eleven members of the Committee on Education and Labor present?

MR. PRATT: I object to that. The witness has testified over and over again on that subject, and it is entirely argumentative. Besides—

THE COURT: Objection overruled.

BY MR. ROGGE:

86 Q Isn't that a fact, Mr. McArthur? A I wouldn't say they weren't there at all, but I don't know. There were certain members of that Committee that were very much interested in this case—

MR. ROGGE: I am asking you—

A (Continuing): I am trying to explain why—they can't write down a nod or a wave to pass them.

Q Now, just a minute. Haven't we already— A (Interposing) You can't record that.

Q Haven't we already had an indication here of several instances, and I can show you several more, that if a Committee member had no questions he was nevertheless called upon and said, "No questions"? A Ordinarily I say that is the routine.

Q If there is any doubt about that, I can call your attention to several instances. A That is true.

Q Where that took place. A I can call your attention to things—

MR. PRATT: I object to this as purely argumentative

THE COURT: I sustain the objection.

BY MR. ROGGE:

Q All I asked you, Mr. McArthur, isn't it a fact that

at the time of questioning Mr. Thomas, who was the witness preceding Mr. Christoffel, there were only eleven members of the Committee present? A No, I wouldn't say that. No.

87 Q Do you know who was present? A No, I don't.

Q Isn't it also a fact that after Mr. Thomas testified, and before Mr. Christoffel was questioned, that Congressman Lesinsky left? A I wouldn't say that at all.

Q And isn't it also a fact that after Mr. Thomas testified and before Mr. Christoffel was questioned that Congressman Brenn left? A No, I wouldn't say that.

Q Isn't it also a fact that after Mr. Thomas testified and before Mr. Christoffel was examined that Mr. — that Congressman Fisher left? A I wouldn't say that, either.

Q Isn't it also a fact during the time of the questioning of Mr. Christoffel the Chairman himself left and Mr. Hoffman took the stand—took the chair? I wouldn't say that—if it shows—

Q Let me refresh your recollection. A If the record will show Mr. Hartley did leave the chair for probably a few moments.

Q He was frequently in and out, wasn't he? A I wouldn't say that at those hearings, no.

Q Didn't Mr. Landis, Congressman Landis, frequently have the chair? A Mr. Landis wasn't there.

Q On other occasions, I am saying.

MR. PRATT: I object to other occasions.

THE COURT: Sustained.

BY MR. ROGGE:

Q Now, to get back to this, isn't it a fact that during the time of the questioning of Mr. Christoffel that the Chairman was absent and Congressman Hoffman assumed the chair? A If the minutes say so, he may have stepped out for a moment or so.

Q Do you have any recollection on that? A No.

Q Let me refresh your recollection by referring you to page 2100, then. A Mr. Hoffman assumed the chair. That is the end of the meeting, practically the end of the meeting.

Q Isn't it a fact that at the time the questions and answers which are recorded on page 2094 took place that there were only about five or six members of this committee present? A No, I wouldn't say that.

Q Do you know who was present? A No, I don't.

MR. ROGGE: Will Your Honor indulge me a moment?

89. BY MR. ROGGE:

Q Mr. McArthur, do you deny Congressman Lesinsky, Congressman Brehm and Congressman Fisher left after Thomas testified, and before Mr. Christoffel was questioned? A I wouldn't deny that. I wouldn't affirm it.

MR. PRATT: Lesinsky and who, did you say?

MR. ROGGE: Congressman Lesinsky, Congressman Brehm and Congressman Fisher.

THE WITNESS: Left when?

THE COURT: After Thomas testified and before Christoffel, the defendant?

THE WITNESS: I wouldn't say. I wouldn't know.

BY MR. ROGGE:

Q Isn't it also a fact, Mr. McArthur, that prior to the time when Mr. Buse and Mr. Thomas and Mr. Christoffel took the stand on Saturday, that none of the preceding witnesses before the House Committee on Education and Labor had been put under oath? A I don't recall whether they were or not.

Q Don't you know as a fact they were not?

MR. PRATT: I object to that. I don't think that is relevant at all.

THE COURT: I will sustain the objection.



MR. ROGGE: I would like to ask one further question.

90 BY MR. ROGGE:

Q Isn't it also a fact, Mr. McArthur, that after these three witnesses, Mr. Buse, Mr. Thomas and Mr. Christoffel, who were there on behalf of Local 248, that after those witnesses, the witnesses following them were likewise not put under oath?

MR. PRATT: I object to that.

THE COURT: Objection sustained.

MR. PRATT: Is that all?

MR. ROGGE: I will tell you in a moment.

The reason I hesitate is because my associate feels I should explain further to Your Honor why I wanted to go into this regular procedure. The reason I hesitate, I mean I think it should be on the record, but Your Honor had said "No" to me, and I want to conduct it the way Your Honor wants me to.

THE COURT: I have ruled on it, Mr. Rogge. You can show anything that happened on Saturday afternoon.

MR. ROGGE: I have covered—I tried to cover regular procedure as far as Your Honor would let me go. I think regular procedure would show—

THE COURT: It may well be. Even showing regular procedure, suppose one of those members of the Committee had stepped out to answer a phone call and wasn't in the room at the regular time the Chairman was going around, that he could very well not have called him because he wasn't there.

91 MR. ROGGE: Yes, but then he would call him when he came back. The Chairman was meticulous about that.

THE COURT: I don't know.

MR. ROGGE: I have read through all these volumes, and I know.

THE COURT: Don't testify now. I have sustained the objection. Let us proceed.

MR. ROGGE: That is all, if the Court please.

THE COURT: Are you through?

*Redirect Examination*

BY MR. PRATT:

Q Mr. McArthur, there were 25 members of this Committee, I believe, were there not? A That is right.

Q And what constitutes a quorum under the practice?

A Thirteen.

Q Half? A That is right.

Q Thirteen. Your record of the afternoon session shows how many present? A I don't know. Fourteen or fifteen. I am not quite sure.

Q Look at it.

THE COURT: You have got it right there.

92 THE WITNESS: He has it over there.

MR. ROGGE: Here you are.

THE WITNESS: Fourteen.

BY MR. PRATT:

Q Fourteen present. Was there any time during that session, so far as you know, when there was less than a quorum present?

MR. ROGGE: Just a minute. The witness has stated time and time again he didn't know who was there. That is what I tried to bring out with him. He stated on direct he didn't know who was there. I object to this. It is improper redirect.

MR. PRATT: If the Court please, I think it is entirely proper redirect.

THE COURT: Well, if he knows.

MR. PRATT: That is all I am wanting to know, if he knows, whether at any time there was a lack of a quorum during that afternoon.

THE WITNESS: No, I don't know.

BY MR. PRATT:

Q Now, this hearing was held where? A In the Caucus Room in the Old House Office Building.

Q How large a room is that Caucus Room, compared with the size of this courtroom, for example? A Probably two and one-half times this size, two times this size.

Q It is a very, very large room, is it not? A That is right.

Q Is it perhaps double the dimensions of this room, in either direction? A I would say in length it is at least double, and probably one and one-half times in width.

Q And besides the space up in front for the members of the Committee is there any room for spectators? A Oh, yes.

Q On this particular occasion do you know whether the meeting was well attended or not? A Very well attended.

Q Just what do you mean by that? A Well, it was packed.

Q It was packed with spectators, was it? A That is right.

MR. ROGGE: I would like to know what the point of all this is, if the Court please. We have gone into this witness:—

THE COURT: I don't know.

MR. ROGGE: I object to it. It is not material.

THE COURT: Sustained.

MR. PRATT: I think that is all.

THE COURT: Step down.

94 MR. ROGGE: One more question just to make sure on this question Government counsel asked.

*Recross Examination*

BY MR. ROGGE:

Q When you said you didn't know about a quorum, Mr. McArthur, you haven't changed your testimony to the effect that you don't know whether when Mr. Christoffel was questioned and when he was sworn there were thirteen members of that Committee present or not? A I assumed that there were.

Q Just a minute. Answer my question. Do you know or don't you know whether there were or weren't? A I can't prove it.

Q You don't know, is that right? A Well, I will say I positively can't prove it.

Q Let us start over. Suppose you tell me what Committee members were present.

THE COURT: Wait a minute. Just a minute. You are not going to start over. The witness has testified and answered your questions.

MR. ROGGE: May I ask him, Judge, to tell who was present at that time?

THE COURT: Yes, you may ask him that, if he remembers.

BY MR. ROGGE:

95 Q Will you tell us, Mr. McArthur, at the time that Mr. Christoffel was sworn and at the time he was questioned who was present? A No, I can't say just who was present. I would refer to my tally sheet and say that those people were present.

MR. PRATT: That is all, Mr. McArthur.

MR. ROGGE: I have more questions, if the Court please. May I have the tally sheet?

BY MR. ROGGE:

Q Did I misunderstand you previously, Mr. McArthur, that these tally sheets reflected, and I am referring now to Government Exhibit 4, who was there at about 2:15 in the afternoon?

MR. PRATT: I object to this.

THE COURT: Sustained.

MR. PRATT: It is repetition, pure and simple.

THE COURT: Sustained. We have been over that. What is the next question, Mr. Rogge?

BY MR. ROGGE:

Q Isn't it a fact that your tally sheet shows Mr. McConnell as absent? I am asking you now about Government's Exhibit 4, where, as a matter of fact, he is shown as questioning Mr. Thomas in the afternoon.

MR. PRATT: I object, if the Court please, for the same reason.



THE COURT: We have been over this before.

96 MR. ROGGE: This one question I did not ask him.

THE COURT: Very well. I will let him ask it.

BY MR. ROGGE:

Q This tally sheet shows Mr. McConnell was absent, doesn't it? A That is right.

Q And as a matter of fact he was there in the questioning of Thomas, wasn't he? A If the record says so, he was. He wasn't in the meeting when it opened. That (indicating) is Mr. Buse.

Q Now give your attention here (indicating). This is the afternoon session, isn't it? A Yes.

MR. PRATT: What page are you referring to?

MR. ROGGE: 2022.

BY MR. ROGGE: Mr. McConnell is present, isn't he, at that time? A According to the minutes, yes, the transcript.

Q This tally sheet shows him as absent, doesn't it? A He wasn't in at the first start.

Q In other words, Mr. McArthur, this tally sheet is only good for 2:15 in the afternoon, isn't it, and not for the rest of the afternoon? A I wouldn't say it was.

97 Q I don't know which way you answer. A I say I wouldn't say it was good for the rest of the afternoon.

MR. ROGGE: If the Court please, I want to make a motion to strike Government's Exhibits 3, 4, and 5, on the basis —on the same ground on which I objected to them yesterday, that they aren't material and I have additional objection to 5 on the basis of cross-examination this morning. There is no sufficient foundation laid for that.

MR. PRATT: We have other testimony here as to how those were made up.

THE COURT: I will overrule the objection. Your motion is denied. There is a presumption of regularity as to the proceedings before the Committee, and I will deny the motion.



MR. ROGGE: I may say at that point, I don't want to argue with Your Honor, but Your Honor has just stated we couldn't rely on regular procedure, and now Your Honor—

THE COURT: No, No. I mean in the course of proceedings. I don't mean what took place. The Government has shown by Exhibit 4 a quorum was present in the afternoon session.

MR. ROGGE: At 2:15.

THE COURT: At 2:15, and until the contrary is proven that will be presumed. Don't argue with the Court, Mr. Rogge. You may have an exception.

MR. PRATT: That is all, Mr. McArthur.

(The witness was excused.)

MR. PRATT: Mr. Smith.

98. Thereupon

*Martin C. Smith*

was called as a witness on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Mr. Smith, will you state your name, please? A Martin C. Smith.

Q Your residence is here in Washington, is it not, sir?

A Right.

Q And your occupation? A Shorthand reporter.

Q What is your employment? What was your employment on March 1, 1947, with reference to the Committee on Education and Labor of the House of Representatives? A I was taking notes of that committee.

Q Did you take the notes of the testimony of the defendant Harold Christoffel on that date? A I did.

Q March 1. What time of the day was that? A Well, I think I came in at 11 o'clock. I was double-heading with Mr. Moeckel.

Q And by the way, Mr. Moeckel was at that time  
99 the official reporter for the Committee, was he not?

A He was.

Q And he has since died? A That is right.

Q Have you with you your stenographic notes of the  
testimony in the afternoon of that day? A I have the  
notes of March 1 here.

Q The notes of March 1? A This is the afternoon  
part.

Q Did you take the entire afternoon session, Mr. Smith?

A I would have to look at the record to determine that. I  
don't remember, myself.

Q I am showing you this transcript which I will ask to  
be marked for identification Government's Exhibit 6.

(The transcript referred to was marked Govern-  
ment Exhibit 6 for Identification.)

BY MR. PRATT:

Q Will you examine this transcript and state how much  
of that testimony you, yourself, took as a shorthand re-  
porter? A I will have to check through here. Here is  
the morning; you want the afternoon. Do you know where  
the afternoon starts? Do you know what page the after-  
noon starts? I have got the afternoon page. It is 3330.

Q Page 3330, Mr. Smith. A I have found it now. Ac-  
cording to this, just hastily going through it, I start-  
100 ed at page 3472 at 3:30.

Q You started at 3:30 in the afternoon? A  
That is right.

Q So you were not there at the start? A No.

Q Of the afternoon session? A Mr. Moeckel's name  
is on the afternoon beginning.

Q I beg pardon? A Mr. Moeckel's name is at the be-  
ginning of the afternoon.

Q So your work started with page what? A 3472.

Q 3472, and did your work continue throughout the bal-  
ance of that volume, that is to say, till the end of the after-

noon session? A I think it did, although it is not indicated. I am pretty sure, however, I did.

Q Will you produce your stenographic notes of that work, the Stenotype ribbon, or what do you call it? A Stenotype notes.

Q Which you have handed me. Do these include your entire services on that afternoon session, about 3:30 to the time of adjournment? A That is right.

MR. PRATT: And may these be marked, please?  
101 (The notes referred to were thereupon marked Government's Exhibit No. 7 for Identification.)

BY MR. PRATT:

Q Did you take the testimony of the various witnesses accurately, Mr. Smith? A To the best of my ability.

Q And after you had taken the stenographic notes who transcribed them into this record, if you know? A I transcribed them into the dictaphone and from that it was taken and written by Miss Fentriss.

Q That is to say, from your notes you read into the dictaphone the exact record of what had occurred at this meeting of the Committee and the dictaphone records were then transcribed by Mrs. Fentriss; right? A That is right.

Q And is this volume which has been marked Government's Exhibit 6 for Identification, is that the transcript made by Mrs. Fentriss of your notes? A That is right.

MR. PRATT: We offer in evidence, if the Court please—

MR. ROGGE: I take it I may cross-examine before Your Honor rules on it?

MR. PRATT: If the Court please, yesterday afternoon, Mr. Rogge agreed that Mrs. Fentriss might be excused to be—

MR. ROGGE: But that doesn't—

102 MR. PRATT: You said that the transcript was accurately made.

MR. ROGGE: If the Court please, I didn't give up and I so stated yesterday afternoon my right to cross-examine

this witness. I told them they didn't have to produce Mrs. Fentriss, but I still have the right to cross-examine this witness and I ask for it.

THE COURT: Very well.

*Cross Examination*

BY MR. ROGGE:

Q Mr. Smith, did you check your stenographic—your Stenotype notes against the transcript? A When?

Q At any time? A I did hurriedly the other day.

Q Never carefully, however? A Not exactly; no.

Q At what time did you begin on this transcript which is Government's Exhibit 6? A The afternoon session, according to the notes on the side, was at 3:30.

Q In other words, you started at 3:30 p.m. when the witness before the Committee was Mr. Thomas; is that right? A That is right.

Q And then you took Mr. Thomas and Mr. Christoffel? A That is right.

Q Now, have you any indication as to what time Mr. Christoffel began his statement? A No, I don't have.

Q Have you any estimate, Mr. Smith, taking in mind you started at 3:30 p.m., you know about how fast those pages run, don't you? A I have to confess I couldn't tell you, no. I wouldn't be able to estimate.

Q Now, the adjournment that day was at 5:25; is that correct? A According to the record, yes. I think they had a recess.

Q Well, then, can you tell us whether the questions and answers which take place on this Government's Exhibit 6 for Identification between 3535 and 3550 didn't take place between 4:30 and 5 o'clock in the afternoon on Saturday, March 1? A I couldn't say as to the time, no. As to the ending time, it took place before 5 o'clock.

Q Let me ask this. We can fix this limit in the beginning time. You didn't start before 3:30? A That is right, sir.



Q As a matter of fact, the witness who was on was Mr. Thomas? A At that time, yes, sir.

104 Q And Mr. Christoffel followed Mr. Thomas, and there was Mr. Christoffel's statement and considerable questioning before we get to page 3535; is that right? A That is right.

Q So the material which is recorded at pages 3535 to 3550 took place some time after 3:30 in the afternoon? That is right.

Q As a matter of fact, a considerable time after, and 5 o'clock in the afternoon? A That is right.

Q Now, can you tell us during that period of time what Congressmen who were members of that Committee were present? A I could not.

Q You have no way either of looking at your notes or in any other way telling us who was present?

THE COURT: Let me see that.

THE WITNESS: It would have to be a matter of memory, and on the House side you don't keep a record of attendance. On the Senate side we do.

BY MR. ROGGE:

Q You didn't keep any record of attendance? A No, not on the House side.

Q Maybe we can get at it this way: Don't you recall that at the time the questioning of Mr. Christoffel  
105 there weren't any members of the Democratic side present except Mr. Kennedy, and he was in and out?

A It would be awful hard for me to remember because I have no memory of it. I don't charge my memory with who is on the rostrum.

Q You are familiar with the regular procedure of the Committee, how they called on different members? A That is right.

Q They called—it was the regular procedure to call on the Republican members in the order of seniority and then on Democratic members in the order of seniority? A That was the regular procedure, although that was varied at times.



Q So that by looking at that procedure, couldn't you by looking at your notes tell us who was present when Mr. Thomas was questioned?

MR. PRATT: I object to that, if the Court please. He said the procedure did vary at times.

THE COURT: I will sustain the objection.

MR. PRATT: Is that all?

MR. ROGGE: That is all.

MR. PRATT: I am offering this transcript, if Your Honor please.

MR. ROGGE: I want to know—excuse me.

MR. PRATT: And the Stenotype notes.

106 THE WITNESS: I don't lose those, do I?

MR. ROGGE: I won't ask that those be retained.

THE WITNESS: Do those go out of my custody?

THE COURT: No, you may keep them. They may be admitted.

MR. ROGGE: I want to know for what purpose this is offered? I may say—

THE COURT: What took place before the Committee, I suppose.

MR. PRATT: To prove the testimony on the defendant.

MR. ROGGE: And I am going to object, and I think Your Honor might like to have me state my objections out of the presence of the jury. I will be very happy to.

MR. PRATT: I think the witness may be excused, (The witness was excused.)

(Thereupon, counsel approached the bench and the following proceedings were had, out of the hearing of the jury:)

MR. ROGGE: Although I have noted very—a number of discrepancies in this, I am not going to make a point of that, Judge.

I do make the point that if these are offered to show what testimony took place they are not admissible, because there is no presumption of regularity with reference to

this kind of thing where the presumption of innocence is involved. The presumption of innocence overrides.

As a matter of fact, in the first place, under the  
107 authorities there is no such presumption of regularity and, in the second place, if there were the cases make it clear that that is what is called an abstract presumption, and the defendant's presumption of innocence which follows him all through a case overrides any such presumption.

I have no objection to having these admitted to show who was present, and I think when you take the regular procedure of the Committee that document itself will show affirmatively that there were only 11—

THE COURT: I don't know whether it shows who was present or not, but it shows what he testified to before the Committee.

MR. PRATT: That is what it is offered for.

MR. ROGGE: Just a minute. If the Court please, I would like to be heard on this, and may I make this suggestion:

I have already prepared a case memorandum on it, which I would like to submit to the Court, because I think the case should turn on this, and may I make this suggestion:

I understand the next witness is Congressman Hartley. Would Your Honor reserve ruling on this until we have heard Congressman Hartley, and then I would like to argue this point at length, because I think the cause turns on this point.

In other words, there is no presumption a quorum is present at any particular time.

THE COURT: No, but they have proved the ex-  
108 istence of a quorum at the time the Committee started in session at 2:15.

MR. ROGGE: At 2:15, but there is no presumption under the authorities I have listed there that the quorum continued.

Furthermore, if there were such a presumption the cases

make it clear that the presumption of innocence overrides that presumption. I have authorities from all the way, anywhere you can look for them, the highest precedents, and the authorities are clear to the point, and before Your Honor commits himself on this, I don't want to hold up the proceedings here with the jury here, I would suggest if Congressman Hartley is the next witness we go ahead with him and Your Honor reserve ruling on this until I have had an opportunity to argue to Your Honor, because I am satisfied as to what the law states.

MR. PRATT: The only purpose of offering this transcript is to show what occurred at that meeting. This doesn't prove or disprove there was a quorum present. That has already been established. It is simply to prove what Christoffel swore to at that meeting. What has that got to with this question of presumption of innocence?

MR. ROGGE: I can argue the citations to Your Honor that have been carefully set out.

THE COURT: No, I want to know why you are objecting to this.

MR. ROGGE: The reason I am objecting to this is that this is for the purpose of saying what Mr. Christoffel said. There is no more—

THE COURT: Don't you think the Government is entitled to show what he said?

MR. ROGGE: Only if they show beyond—I mean what Mr. Christoffel said is meaningless unless the Government sustains the burden of showing that at the time he was sworn and at the time he gave the alleged perjurious testimony there were 13 members present, and these cases here establish it, Judge—

THE COURT: The Government so far has proven, I suppose it has other proof besides that, through Congressman Hartley and other members of the Committee. Are you going to bring everybody down here?

MR. PRATT: Congressman Hartley is the next witness. We believe a case has been made showing a quorum

present, and it is purely a defensive matter to disprove that there was a quorum. If it becomes necessary in rebuttal we can produce all these Congressmen, because I have interviewed every last one of them, and they say, all of them, that they were there.

MR. ROGGE: I know they weren't there, because not only do my witnesses so testify, but the record which I have independently studied, of this Committee, joins with one or two exceptions, with the witnesses whom I have consulted.

I put it on this ground: that the Government in this situation cannot rely on a presumption, that they must prove beyond a reasonable doubt that at the time the witness was sworn and at the time he gave the alleged perjurious testimony there were 13 members present and so far the proof has completely failed, in that the witness says he doesn't know who was there.

THE COURT: The proof is that during the session a quorum was present.

MR. ROGGE: At 2:15.

THE COURT: And until the contrary is proven I don't see how I can take any different course.

It may well be that you have a defense to it, that you can show that there was no quorum present. If that be so, there is a different situation, but this is only on a prima facie showing.

MR. ROGGE: May I just mention to Your Honor the cases here, that where a presumption of innocence conflicts, and I don't think there is a presumption of regularity in this situation, but assuming Your Honor is right and there was, where you have a conflict between the presumption of innocence and some other presumption, the presumption of innocence prevails. Thus it has been held that the presumption of innocence prevails against the presumption of a woman's chastity, against the normal presumption of ownership arising from possession, against the presumption of delivery of an instrument arising from



the fact of possession by the party to whom delivery must be made. Every time—there are a whole line of cases, every time the presumption of innocence has come up against another abstract presumption, the presumption of innocence has prevailed.

I would like to read from Wigmore to show Your Honor what he says about this:

“Performance of Official Duty and Regularity of Proceedings

“The general experience that a rule of official duty, or a requirement of legal conditions, is fulfilled by those upon whom it is incumbent has given rise occasionally to a presumption of due performance of official duty. This presumption is more often mentioned than enforced; and its scope as a real presumption is indefinite and hardly capable of reduction to rules.

“It may be said that most of the instances of its application are found attended by several conditions; first, that the matter is more or less in the past, and incapable of easily procured evidence; secondly, that it involves a mere formality or detail of required procedure, in the routine of a public officer's action;—”  
which isn't true here.

“—next that it involves to some extent the security of apparently vested rights,—”  
also not true here.

“—so that the presumption will serve to prevent an unwholesome uncertainty; and, finally, that the circumstances of the particular case add some element of probability.”

112 The testimony that is already here of congressmen going in and out, the possibility as to the contrary.

He also has this as another part:

“The following limitations may therefore be said to apply:

“(3). the powers can be exercised by a committee dele-



gated for the purpose; but when such a committee has been designated, the delegated power is limited to the committee acting as such."

And he has this footnote:

"It would follow from this proposition that a question by a single member only of the committee, or by a sub-committee need not be answered."

I can go through cases after cases where they say—

THE COURT: I don't know why you gamble on this thing, if you have got people who can testify as to who was at that meeting. I will reserve it until I have had a chance to go into it.

MR. ROGGE: But Your Honor, I would like to argue it before Your Honor.

MR. PRATT: I would like to have a copy of the memorandum.

MR. ROGGE: I will give counsel a copy.

THE COURT: Let us proceed with Mr. Hartley. I will reserve my judgment:

113 (Thereupon the witness was excused.)

MR. PRATT: Call Congressman Hartley.  
Thereupon—

*Honorable Fred A. Hartley, Jr.*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PATTON:

Q Congressman, will you identify yourself, please?

A I am Fred A. Hartley, Jr., Member of Congress, and Chairman of the House Labor Committee.

Q How long have you been a member, or Chairman of the Committee on Education and Labor of the House of Representatives? A I have been Chairman of the

Committee on Education and Labor since the beginning of the Eightieth Congress.

Q And you have been in Congress a number of years, have you not? A I have. I am just starting my twentieth year.

Q Referring you specifically, Mr. Hartley, to the early part of 1947, and specifically to the first day of March of 1947, state whether or not, if you will, an investigation was being made at that time and an inquiry by the House  
114 Committee on Education and Labor? A On that particular date?

Q Yes, that date and prior thereto. The early part of 1947? A Well, for about six weeks, the House Committee on Education and Labor had been conducting hearings on what was later to become the Taft-Hartley Law and in addition to that, as a result of some of these hearings, the House of Representatives passed a resolution, House Res. 111, giving the Committee authority to make such investigations, and this meeting, or the hearing on the first of March, as I recall, was a combination of both.

Q And was it under Resolution No. 111 that the Committee was functioning at that time? A It was.

Q And under the Reorganization Act of 1946? A That is correct.

Q Now, what was the scope of the investigation being made by the Committee at that time? A Well, we were, as authorized by the House, to inquire into the causes of labor disputes, work stoppages, and strikes, and in addition to determining the causes for these disputes and work stoppages and strikes, we were also to inquire as to the objectives and aims of those that participated in such activities, and also to determine any connection with  
115 or lack of connection with any organization, association, or groups that we thought might be engaged in subversive activities.

Q Do you recall the March 1st appearance before the Committee of Mr. R. J. Thomas? A Yes, sir, I do.

Q Did you state at that time to Mr. Thomas the purposes of the hearings? A I did.

Q Do you recall also the appearance before that Committee on the afternoon of March 1st, the appearance of Mr. Harold Roland Christoffel? A I do.

Q Did you state to Mr. Christoffel also the purposes the Committee was holding a hearing at that time? A As I recall, I asked him whether he had been present and had listened to statements of the purposes of the Committee which I had read to Mr. Thomas, or had spoken to him.

Q I show you now, Congressman Hartley, and refer you to page 2049 of the printed transcript, and state, if you will, whether or not that is the statement which you made to Mr. Thomas?

THE COURT: Mr. Thomas?

MR. PRATT: Mr. Thomas.

THE WITNESS: This is the statement which I made to Mr. Thomas, but I would like to call your attention 116 to a typographical error.

In the second paragraph where I said: We are inquiring into the reasons which brought about the various strikes and work stoppages in the various plants, what influence was exerted, at individuals or groups in or outside the labor movement inspired or carried them on, and what were, or are, the objectives and purposes of those activities.

It reads here "at individuals." It should be "what individuals."

It should be: What individuals or groups in or outside the labor movement inspired or carried them on, and what were, or are, the objectives and purposes of those activities.

BY MR. PATTON:

Q Yes. Now, that is the statement to which you directed the attention of the defendant Harold Christoffel?

A That is correct?

Q I refer you now also to page 2079 of the printed

transcript. State, if you will, if that is the language you used to Mr. Christoffel at that time and place? A Yes, sir.

Q After having directed Mr. Christoffel's attention to the statement which you made to Mr. Thomas as to the purposes of the hearing, did you thereupon proceed to swear Mr. Christoffel? A I did.

117 Q And at that time did he take the oath? A He did.

Q Did he thereafter testify? A He did.

Q And answer questions in response to questions propounded by various members of the Committee? A That is correct.

Q Were you present, Mr. Hartley, when the Committee convened on the morning of the first? A I was. I called it to order.

Q You called the meeting to order? A Yes.

Q Were you also present at the afternoon session and were you also acting as Chairman at that time? A I called it to order in the afternoon; yes.

Q Now, during the period of the examination of Mr. Christoffel, did you propound questions to the defendant yourself? A I believe I did. I don't believe my interrogation was very extensive, but I am quite sure, I am quite certain I did interrogate him.

Q And during that period other members of the Committee also propounded various questions to the defendant? A That is correct.

Q What was the reason for this particular inquiry, Congressman Hartley? Had there been some complaints come to the Committee as to disputes in connection with activities of certain organizations? A Well, I don't believe that there was a more striking case presented to the Committee than the dispute involved—

MR. ROGGE (interposing): If the Court please, I am going to object to this man's characterization of a case

that came before the Committee. If counsel is going into this, I would want to go into it on cross examination also.

THE COURT: I sustain the objection.

BY MR. PATTON:

Q Now, in the course of your investigation, Mr. Hartley, did the Committee on Education and Labor deem it relevant to that inquiry to go into the matter of communism and communistic infiltration into various labor organizations? A It did.

Q And was it by reason of relevancy to communistic activities that these questions were propounded to Mr. Christoffel?

MR. ROGGE: I am going to object to the leading form of the question.

THE COURT: That is rather leading. I suggest you reframe the question.

BY MR. PATTON:

Q It was rather leading.

119 Mr. Hartley, in the examination of the defendant, Mr. Christoffel, did you and other members of the Committee seek to determine his activities in connection with communism? A Members of the Committee did.

Q And for what purpose did you wish to know his activities and in connection with communism? A It was for the purpose of determining just how much communistic infiltration there had been in this particular local and in the labor movement generally.

Q And did you feel those activities were material and relevant to the labor problems which were before your Committee at that time?

MR. ROGGE: I do not think it is a matter of how he felt on the subject. The Committee may have taken certain action, and if he did, he can show it, and if it is relevant, he can show it.



MR. PATTON: It goes to the question of materiality.

BY THE COURT:

Q Congressman, the Committee had in mind remedial legislation, did it not? A Yes, sir, we did.

BY MR. PATTON:

Q And as a result of your various deliberations throughout this period of time there was remedial  
120 legislation enacted? A That is correct; on the subject of communistic infiltration in the labor movement.

Q And you refer to that as the Taft-Hartley law? A That is correct. We provided in that law a provision which denied any labor organization standing under the law whose officers declined to sign a statement that they were not members of the Communist Party.

Q And in seeking to elicit this information from Mr. Christoffel at that time the Committee was seeking education on all of these various matters; is that true? A That is true.

Q Mr. Hartley, you had nothing to do with keeping an attendance record, did you, of the Committee? A Well, members of my staff attended to those duties, but as Chairman of the Committee, I certainly have tried to make certain that at all times—

MR. ROGGE (interposing): If the Court please, I have an objection as to what they did at various times. The question here is who was present.

THE COURT: I will let him testify what he did.

THE WITNESS: What I was about to say: As Chairman of the Committee, naturally, to preserve the dignity of the Committee, I endeavored to make certain we have a quorum present and that proper decorum was observed.

BY MR. PATTON:

121 Q In this particular case, Mr. Hartley, did you also follow that procedure and take the precautions to determine that a quorum was present at all times? A

I followed that procedure, not only at this hearing but all other hearings of the Committee. It is a standing rule in the Committee that the majority and the minority clerks notify their members, that is, the majority and minority members, 15 minutes prior, or approximately that, prior to every hearing of the Committee.

Q Now, on this particular occasion, is it not true, Congressman Hartley, that a considerable number of people were present and listened to this testimony?

MR. ROGGE: I object to that. That is not material.

THE COURT: I sustain the objection.

BY THE COURT:

Q When the defendant testified before your Committee, was a quorum present? A There was a quorum present, Your Honor.

MR. PATTON: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Congressman Hartley, it is a pleasure to have you here because we may be able to clear up some things. You say a quorum was present. Who was present, will you tell me, sir, at the time Mr. Christoffel was sworn and  
122 gave the answers to the questions? You may refer to this volume, if you wish, to establish that. A As I recall, and I recall this hearing particularly well, for the reason that Mr. Christoffel was supposed to appear that morning, and there had been stories which reached the Committee that he was present in the building and had left, and that—

MR. ROGGE (interposing): I don't want to interrupt but I think it is a simple question to answer.

MR. PRATT: Well, now, he is answering.

BY MR. ROGGE:

Q Can you tell us who was present? A I think I can tell you fairly accurately. I was present, Congressman Hoffman was present, Congressman McCowen, Congress-

man Brehm, Congressman McConnell, Congressman Gwinn, Congressman Kerston, Congressman Owens, Congressman Nixon, Congressman Lesinsky, Congressman Fisher, Congressman Kennedy, Congressman Lucas, and I think, I am not certain of this, but I think Congressman Buek was present, too.

Q As a matter of fact, the talley sheet shows Congressman Lucas' absence, doesn't it? I am showing you Government Exhibit No. 4

THE COURT: I think you should inform the witness that the talley sheet was made by the clerk.

THE WITNESS: This talley sheet shows Congressman Lucas was not present.

May I add this? It also notes Congressman Smith was there, was present, and I failed to mention his name.

BY MR. ROGGE:

Q Let me ask you this, Congressman: You follow a regular procedure, don't you, the Committee follows a regular procedure, your Committee? A Yes, we have made an effort. We try to observe parliamentary rules, as I have previously stated. That is true.

Q Did you follow that procedure on Saturday? A I think I must have followed it just as religiously as I did at every hearing.

Q You followed that religiously? A Quite regularly; yes.

Q And that procedure consisted of this: The Republican members of the Committee were arranged in the order of seniority to your right, and the Democratic members in the order of seniority to your left? A That is correct.

Q And after a witness had made his statement, you called upon all the members that were present, starting on the Republican side in the order of seniority, and then on the Democratic side? A That is correct.

124 I might say this; that that is not an absolute rule. There are some times when I might get a nod from

a member, although that is an exception, and so he would not be recognized by name. Sometimes a member would come to me and tell me, off the record, and he would ask to be passed.

Q And these members would indicate that they had no question or go ahead and question? A That is correct.

Q And sometimes you would call upon as many as four in a row, and they would state they had no questions, and then you went on to the next one? A That will happen very often.

Q In other words, with reference to each of these witnesses, you had what amounted in effect to a roll call?

A Yes, I think that might be a fair assumption.

Q That is a fair statement? A Yes.

Q Now, the witness who just preceded Mr. Christoffel was Mr. Thomas; is that correct? You may refer to this, if you wish. A Yes, I would like to. I think he was. That is correct.

Q Incidentally, this was on Saturday afternoon, wasn't it? A That is correct. The hearing was in both 125 the morning and the afternoon.

Q And the witness who began the afternoon session, and again you may refer to this, Congressman, was Mr. Buse? A Yes, I remember that.

Q And Mr. Buse was on for a period of time, and you resumed, incidentally, at 2:15; is that correct? A That is correct; that is right.

Q And that continued from page 2021 of the printed record to page 2049; that is correct? A That is right.

Q And then there was a statement by Mr. Thomas which took over an hour; is that correct? A I am not certain how long Mr. Thomas took. I am not certain how long he took. I think he took approximately an hour, and I will tell you my reason. Members of the Committee assumed Mr. Thomas was stalling for time, and he was actually conducting a filibuster against the Committee, so that Mr. Christoffel would not have to appear that afternoon.

Q And Congressman Hoffman complained with him about taking an hour for his statement? A Yes.

Q And if you had convened at 2:15, and Buse took a half or three-quarters of an hour, you would be then at 3 o'clock, and by the time Mr. Thomas finished his statement, it was after 4 o'clock; is that correct?

A Would you repeat that? I am mixed up in my mind.

Q I am trying to get it straight. You began the afternoon session at 2:15? A That is correct.

Q And then you heard Mr. Buse, and he covered from pages 2021— A (Interposing) May I have that?

Q Yes. He covered to 2049. A The reason I asked you to look at this, you see, actually, Mr. Buse, according to this record, only testified for two pages, and he inserted—I believe he did—yes, he inserted a statement which takes all the rest of that.

Q How long would you estimate for Mr. Buse on the stand, a half an hour? A Well, this would be a rough guess, but I would say between 15 minutes to a half an hour. No more than that.

Q Which brings us in the neighborhood from 2:15 to 2:30 or a quarter of three? Right? A Right.

Q And then we come to Mr. Thomas, who said—he asked you to make a statement which lasted over an hour, didn't he? I am just trying to refresh your recollection.

A I think it did last about an hour.

127 Q And that places us at about a quarter to 4; right? A Yes, somewhere between 3:30 and quarter to 4.

Q And then with reference to the witness Thomas you had what is in effect one of those roll calls, going around and asking that question? A That is correct.

Q Now, in calling upon the members you went in the ordinary of seniority, and then the next one? By the way, the next one in seniority to you is Congressman Landis? A That is right, but he wasn't present.



Q So the next Congressman wasn't present, and you went to the next one in line of seniority, which in that instance would have been Congressman Hoffman? A That is correct.

Q And then if there were two or three Congressmen following Hoffman in line of seniority who weren't present, you would go to the next in line of seniority? A That is correct.

Q Now, on that basis, let us look to see what the roll call indicates. Incidentally, we are now at about a quarter to four in the afternoon; right? A That is correct.

Q You called first upon Congressman Hoffman? A Yes, sir.

Q And after Congressman Hoffman you called  
128 upon Congressman McCowen, who stated he had no questions; right? A That is correct.

Q And then after that you called upon Congressman Brehm? A That is correct.

Q So that would indicate that the next one there, at that point of time, between Mr McCowen and Mr. Brehm, was Mr. Brehm. In other words, Mr. Gwinn, and Mr. McCornell, and Mr. Schwabe weren't present at that particular moment, if you followed, as you said you followed, your procedure rather religiously? A That is correct, although I would like to call your attention to the fact that there were exceptions, and I will admit that they were rare, when I failed to call the names of the persons present.

Q In other words, I have gone through volumes of this proceeding, and on going through it I came to the conclusion you do have such a procedure, and it was set and you didn't vary it in any way. For instance, any time a person would break in on someone else of the Committee, you said: Will the gentleman yield? A That is correct.

Q You had a procedure which you followed religiously, as you said earlier? A That is correct.

129 Q Now, did anybody whisper to you on this occasion that they wanted to be passed?

THE COURT: What occasion?

MR. ROGGE: On the Christoffel—I am talking about Thomas, Your Honor. Excuse me.

THE WITNESS: I have no indication of anyone doing it on this occasion.

BY MR. ROGGE:

Q In addition to saying they had no questions, they sometimes say: I yield the time, or pass for the time being? A That is correct. There are many cases when a member will pass, and then come back and interrogate a witness after the first round.

Q After the first round? In other words, you have a first go around and then a second one? A Yes, sir.

Q And that is all reflected in the printed hearings? A Yes, it is.

Q So that to come back to Thomas, on the afternoon of March 1st when this questioning began, we have present, first, we have you present, and then Congressman Landis absent, and then Congressman Hoffman, and then you go to Congressman McCowen? A Yes, sir.

Q And then Congressman Schwabe, McConnell,  
130 Gwinn, and Congressman Buck were present? A  
Congressman Buck was absent but Congressman Gwinn was present.

Q I am talking now, and I am asking about who was present at the time of the questioning of Thomas.

This is the beginning. I am trying to get at what was in effect this roll call on the witness Thomas, the one who just preceded Mr. Christoffel, and who was present at that time. A Yes.

Q So as you say there were present yourself, and Congressman Landis was absent, and Congressman Hoffman and you called upon him and he was present? A That is right.

Q And Congressman McCowen, you called on him and he said: No questions? A That is correct, I believe.

Q You might follow this page right along. A That is correct.

Q Then Congressman Schwabe, Congressman McConnell, Congressman Gwinn, and Congressman Buck were absent; right? A At least, I didn't call on them, and I can't imagine that they were present at that particular time because I undoubtedly would have called on them.

131 Q If they were present? A That is right.

Q So the next one after Congressman McCowen is Congressman Brehm? A That is right.

Q And then following along, after Congressman Brehm, Congressman Wint Smith is absent, and the next one is present and that is Congressman Kersten right? A If you will pardon me, according to this record, I see Mr. Kersten following Dr. Brehm's questioning without being recognized by me.

Q Well, you will find that Mr. Brehm said: That is all, and the next one who goes on is Mr. Kersten. If he were coming in out of turn, there would be an objection to that? If there were someone who preceded him, he would have said: Will the gentleman yield? A I believe that is true.

Q So that returning to this page, the very fact that in the record Congressman Kersten followed Congressman Brehm shows that at that time Congressman Smith was not present; right? A It would indicate that; yes, sir.

Q As a matter of fact, that jibes with the talley sheet which was made up at 2:15, I think? But in any event, that would indicate that Congressman Smith was absent and Brehm followed by Congressman Kersten; is that correct? A That is correct.

132 Q Then we find who follows Congressman Kersten? A Congressman Owens.

Q In other words, after Congressman Kersten—Congressman MacKinnon was absent, and therefore you called on Congressman Owens? A That is correct.

Q Now, let us follow Congressman Owens through to the next one. You called on Congressman Kearns and he said: No question? A That is correct.

Q Then you called upon Congressman Nixon? A That is right.

Q And after Congressman Nixon, Congressman Lesinsky? A That is correct.

Q And after Congressman Lesinsky, you called upon Congressman Fisher right? A That is correct.

Q In other words, that indicates that Congressman Barden and Congressman Kelley were absent, who were next in line of seniority between Lesinsky and Fisher? A It does.

Q Whom did you call upon next? A Mr. Kennedy.

Q Calling upon Mr. Kelley indicates that Congressman Powell, Congressman Wood, Congressman Madden, and Congressman Klein were absent?

A It does.

Q And is Congressman Kennedy the last one you called upon with reference to this, on the first go around with reference to the witness Thomas? A That is correct, sir.

Q Now, if you add up all those that you called upon in what is in effect a roll call with reference to the witness Thomas, there were present a total of eleven, including yourself, isn't that correct?

MR. PRATT: I object to the characterization that this is a roll call. It wasn't anything of that sort.

MR. ROGGE: The witness so stated.

MR. PRATT: He said that there are various procedures that ordinarily obtain, but it certainly is not a roll call.

THE COURT: The witness stated previously that the same procedure was followed. As Chairman of the Com-



mittee he went around the table and asked the members of the Committee if there were any questions. Now, whether or not that is conclusive proof that because the Congressman only called upon ten, or that there were ten or more there, I do not know. It is just what the Congressman explained had happened, and the record shows that these men were called upon. All the members of the Committee were called upon, as the Congress-  
 134 man said, and it would indicate that those not called upon were absent, but that is not proof of the absence.

BY MR. ROGGE:

Q I am simply trying to get a fair statement of the facts, having refreshed your recollection from these pages.

Isn't it a fact at the time, and you may add these up if you will, that at the time of the questioning of the witness Thomas, there were present, including yourself, a total of eleven members of the Committee? A This record may indicate that, but as I said before, there are times, and I qualified it by saying, there are exceptions when I may have taken a nod from a Committee member to indicate he didn't have any questions, and probably didn't call upon him, and the reason I believe that there was a quorum present, I remember I was very careful of that, and at practically every hearing, and where a quorum wasn't present, I would see to it that the clerk called the offices of the absent members and get them into the room so we would begin and maintain a quorum at all times.

Q Isn't this a fair statement: You tried to see to it that there was a quorum present at the beginning of the session in the morning and in the afternoon? A Always.

Q But there were often times during the session that a quorum wasn't present? Isn't that a fact?

135 A Not very often; that is not so.

Q Well, may I call your attention to an instance where that was a fact? A Oh, I know it has occurred.



THE COURT: He said but not very often.

THE WITNESS: I might add that the only time it has occurred is where there has been an agreement between the minority leader of the Committee and myself that no point of order would be made. Very rarely has there been an exception to that.

BY MR. ROGGE:

Q I am going to call your attention to one of those, I think.

Let me call your attention to page 1004. You would not say at that particular time there was a quorum present, would you?

MR. PRATT: What page?

MR. ROGGE: Page 1004.

MR. PRATT: It is not in this volume. It didn't occur on that date.

I object to it.

MR. ROGGE: This witness stated—

THE COURT (interposing): I will let him answer.

THE WITNESS: This definitely shows a quorum was not present, and the reason is, as the record shows, 136 that there was a quorum call in progress and certain of the members went to answer to their names.

BY MR. ROGGE:

Q But you said that there was always agreement. There wasn't one there? A Oh, yes, there was.

May I explain that in every instance where the Committee was in session during a hearing of the House, in the first place, the Committee had to get permission of the House to sit. In the second place, there was an agreement between the members, on both majority and the minority side, if a quorum call took place that no point of order would be made during that quorum call, and the members would come back as soon as they responded to their names.

Q Well, then, there were occasions when there wasn't a quorum present at the Committee? A Oh, yes.

Q And there were also other times and I would like to call your attention to page 1487, when there wasn't a quorum present in that Committee.

MR. PRATT: Now, if the Court please, this is not material to this inquiry.

THE COURT: I sustain the objection because the witness already testified that there were some occasions when a quorum was not present, but he testified that  
137 when the defendant was before it a quorum was present and named the members of that Committee that were there when he was there.

BY MR. ROGGE:

Q Now, it is also true that Committee members go in and out very frequently from the committee room? A They go in and out but I would not say very frequently.

Q You yourself went in and out of the committee?

A On rare occasions; yes, sir.

Q As a matter of fact, you were out at one point of Mr. Christoffel's testimony? A At the finish of it; that is correct. That is on the finish on Saturday afternoon.

Q And it was also the practice that when you were absent the next man in seniority presided, which was Mr. Landis if he was there? A That is correct.

Q And if both of you, you and Mr. Landis were absent, then it would be Congressman Hoffman? A That is right.

Q Now, I want to get back to those who were present when Mr. Thomas was present, and it is the ten persons you called upon, including yourself at that period of time? A Definitely those eleven were present.

138 Q Who else was present? A I don't know that any others were present. They may have been. I won't say unqualifiedly they were the only ones present, although they may well have been.

Q But if you followed your regular practice, which you followed almost religiously, you called on all there?

A That is right.

Q And you called when Mr. Thomas was there, on ten people? A That is correct.

Q So that at that time, according to that record, including yourself there were eleven present? A According to that record, that is right.

Q Now, let us go ahead and let us see if we can fix the time. We were up to quarter to four when you started with the questioning of—

MR. PRATT (interposing): Object to that. It is not in accordance with the witness' testimony. He said 3:30.

MR. ROGGE: All right, 3:30 or quarter of 4, I think the witness said.

MR. PRATT: It does make a difference. Let us have it accurate.

BY MR. ROGGE:

Q About 3:30 or quarter of 4, and there is lengthy questioning of Mr. Thomas, right, when you had this go around; right? A There was a fair amount; yes, sir. There was a fair amount of questioning.

Q And then Mr. Christoffel took the stand, which would mean that he took the stand some time after 4 o'clock on Saturday; right? A It was some time around 4 o'clock; yes, sir.

Q Now, was there a go around in the way that you have indicated with reference to Mr. Christoffel on that afternoon? A As I recall the afternoon, and I have refreshed my memory by reading the record, Mr. Christoffel took the stand that afternoon, and the questioning—

Q (Interposing) Congressman, don't you know as a fact that after the questioning of Mr. Thomas and before Mr. Christoffel was questioned that Congressman Lesinsky left? A Do I know that as a fact?

Q That is right. A No, I don't know.

Q Do you know one way or the other? A I don't.

Q Don't you also know as a fact that after Mr. Thomas testified and before Mr. Christoffel was questioned that Congressman Fisher left? A No, I don't know that. I am assuming that he was present, although I don't recall distinctly whether he was or not.

140 Q Isn't it a fact, Mr. Congressman—let us see if we can fix it this way.

Isn't it a fact that at the time Mr. Christoffel was questioned, and incidentally, let us refer specifically to a page number, when he was asked questions which appear on page 2094, isn't it a fact that the only member of the Democratic side of the House who was present at any time was Congressman Kennedy, and he was going in and out? A I don't know that to be a fact no.

Q Well, do you know one way or the other on that? A No, I don't. I will be very frank on that. My recollection, and it is strictly a guess, would be that committee members Mr. Lesinsky and Mr. Fisher and Mr. Kennedy were present, but I may be in error there.

Q Well, I would like to have you try to visualize the side to your left. Isn't it a fact at the time of the questioning of Mr. Christoffel the only one who was left there was Congressman Kennedy, and he was going in and out on that side? A That is a possibility, but, frankly, I would have tried to correct the situation as fast I could.

While that side of the Committee is not of my particular concern, but if I would see that there was unbalance, as to a full house on one side and no one on the other, I would immediately try to correct that.

141 Q Yes, but it did occur? A On rare occasions; yes, sir.

Q And this was pretty late on Saturday afternoon? A It was getting late in the afternoon; that is right.

Q As a matter of fact, you left before the close? A Just prior to the close; yes.

Q Did you leave before or after the executive session? A I left just before the executive session.

Q And you left before 5 o'clock yourself and didn't return? A I don't know the exact time.

Q Well, refer to these pages. A Well, I must have left at 5 o'clock.

Q So then you were gone before the time of the executive session, which would mean that you left before 5 o'clock in the afternoon and didn't return? A Let us put it this way: I left about four questions prior to 5 o'clock.

Q In the afternoon? A That is right.

Q And you didn't return? A That is correct; according to this record.

Q The next time you returned was Monday morning? A That is correct.

Q I am not saying that in any way of criticism. After all, this was late on Saturday afternoon.

Isn't it also a fact that after the questioning of 142 Thomas and before the questioning of Mr. Christoffel that Congressman Brehm also left? A I can't testify one way or the other about that, as to whether he left. My belief is that he remained there because I will say very frankly that the members on my side of the Committee in particular were most anxious to interrogate Mr. Christoffel.

Q Yes, but we have already shown from the roll call that took place—do you have any doubt, Congressman, that on the roll call that took place on the witness Thomas, who preceded Christoffel, that there were ten members in addition to yourself there?

MR. PRATT: I object to that; that is not a proper question.

MR. ROGGE: That is proper cross examination.

MR. PRATT: Reference is made to the record relating to the testimony of Thomas. There were ten members beside himself.

THE COURT: The question that counsel now put is: Do you doubt that at the time they called the witness before



the various members of this Committee that there was any more than ten members and the Chairman there at that time.

MR. PRATT: That related to the testimony of Christoffel.

THE COURT: No, he is relating to just the afternoon session.

143 MR. ROGGE: Right.

MR. PRATT: I think it should be confined to the time when Christoffel was being interrogated.

THE COURT: I imagine he will get to that. This is as to the afternoon session, and I will let him answer it.

THE WITNESS: It says on the record, which I have before me, and I have little doubt but they were the members, identified in this record, were the members who were present.

BY THE COURT:

Q Does that indicate, Mr. Congressman, that other members could not be present? A It does not. They could have been present, definitely.

BY MR. ROGGE:

Q Do you know of any others who were present at that time, other than ones you called upon? A Definitely, no. I can't identify them definitely.

Q If they had been present, you would have called upon them, wouldn't you? A Most likely I would have.

Q Oh, incidentally, this informal call to roll would give you a maximum at the time of the questioning, and all the members of the Committee would not sit through the questioning and any particular member could go in and out? A

Well, the great majority remained there for the fact  
144 of the testimony, and as I mentioned before, I tried to maintain a quorum present at all times, but there have been exceptions to that, but in a great majority of cases there was a quorum present.

Q At the time of Thomas were there ten and yourself present? A That is right.

Q And then we go to Christoffel. A That is right.

MR. PRATT: I object to that inference, that those were the only members present.

THE COURT: He did not testify those were the only ones present.

BY MR. ROGGE:

Q We know at the time that Thomas testified that ten members and yourself were present, and you don't know of any additional members who were there, do you? A Positively I can't identify any others, although I feel certain that there must have been a quorum present, but based on this record, apparently, there were ten and myself at the time Mr. Thomas was questioned.

Q In other words, based on that record, and as you stated, although you try to keep a quorum, but based on that record, can't you tell us that at the time of the questioning of Mr. Thomas there wasn't a quorum present? A—With definiteness, I could not say that. I can't say that there wasn't a quorum present, although this record indicates that there were just ten and myself.

Q In any event, do you know of any members who came in at that late hour on Saturday afternoon when Mr. Christoffel took the stand? A To state the name of any member in particular, I can't but I would say this to you in support of the contention I am making, that there was a quorum present.

Mr. Thomas' testimony wasn't considered important, but the members of the Committee felt that he was going to conduct a filibuster to prevent Mr. Christoffel from testifying, and there was a great interest among the members, and if they had been absent in Mr. Thomas' testimony, they would have come in to hear Mr. Christoffel.

Q But your answer is that you cannot name any additional member that came in between the time of the last roll call and when Mr. Christoffel took the stand? A No, except based on the call of the Committee if it needed members.

Q As a matter of fact, the last members came in, and again I call your attention to the fact that this was late in the afternoon, and isn't it a fact that Congressman Lesinsky and Fisher left, and that only Congressman Kennedy was left on the Democratic side? A I don't recall that.

146 Q Isn't it also a fact that Congressman Brehm left? A I don't recall whether he did or not.

Q So that when you subtract these three additional members from the eleven who were there at the time of Thomas' testimony, you get down to a maximum, including yourself, at the time Mr. Christoffel was examined, of eight members, and you yourself left.

MR. PRATT: That is highly objectionable. It is completely argumentative.

THE COURT: You are talking of the time the defendant testified?

MR. ROGGE: That is right. That is the time I have in mind.

THE COURT: Isn't that proper?

MR. PRATT: It is a statement by counsel, rather than a question of the witness.

THE COURT: What?

MR. PRATT: It is a statement by Mr. Rogge, rather than a statement coming from the witness.

MR. ROGGE: This is cross examination. I am asking him whether that is not a fact.

THE COURT: Suppose you reframe it so it will not be objectionable.

MR. ROGGE: Well, I thought I did, but I will  
147 try it again, Judge.

THE COURT: This now is at the time that the defendant testified before the Committee, after he was sworn.

BY MR. ROGGE:

Q And just so that we have the facts down specifically, Congressman, I think we will write on a sheet of paper those who were there at the time.

May we return to Mr. Thomas again?

MR. PRATT: Now, to go back to the testimony of Mr. Thomas is just repetition. It has been gone over.

MR. ROGGE: I am going to try to reframe the question.

THE COURT: You have already brought out by the testimony of this witness that according to the record that you have there it is indicated that at the time that Mr. Thomas testified before the Committee that there were eleven members present, including the Chairman, but this witness testified that that did not mean that others were not present at the time that Mr. Thomas testified.

Do you want to start from there and take it up to the time the defendant testified?

MR. ROGGE: Right.

THE COURT: I do not want to waste time by going over all the members that the record indicates were present at the time Thomas was heard.

MR. ROGGE: I am not going over the whole  
148 thing. I have a little different understanding of the witness' testimony. I understood him to say that he rather religiously, if I may use his word, followed this procedure, and I didn't want to be unfair, but it was my feeling—

THE COURT (interposing): The procedure he said he followed was that he would call on the various members of the Committee, but that there were times when that was not done, and that he would receive a nod from various members that they did not care to be called upon, or they asked the Chairman to pass them.

MR. ROGGE: But he also said those were rare, and he knew of no one that whispered to him that he would have to pass on that particular Saturday, and the record shows whenever they wanted to pass, it is written in there. I don't want to argue with the Court but I think it was a fair conclusion from his testimony.

THE COURT: It may be a proper thing for you to argue, Mr. Rogge, whether or not there was a quorum present according to the evidence presented, but I do not think that you should argue with this witness in framing a question in the way in which you put it, and which was objected to by the Government. Either the Congressman has an independent recollection of who was present at that hearing, or else the record may show who was present at that hearing. The record indicated those eleven were there, but whether it is conclusive that others were not there  
149 is another matter.

MR. ROGGE: Well, I think the way he stated he religiously followed his rule, and I accepted his testimony, too, and the record indicated there were eleven there at that time.

BY THE COURT:

Q Is that your testimony: that at the time Thomas testified there were only eleven members before the Committee? A No, sir; I didn't mean to make such a statement.

THE COURT: I didn't think you did.

THE WITNESS: I said the record might indicate that, but I didn't mean to say that.

THE COURT: I understood it that way.

BY MR. ROGGE:

Q Congressman, didn't I understand you to say that you were rather religious in following the method of calling upon all those present? A That is true.

Q Do you recall of any exceptions at the time of Mr. Thomas' testimony? A To recall any distinct exception, I don't, but in going around the Committee, I might have possibly figured on this, and this happened occasionally; that a member might be called to the phone when it was his time to be called upon, and not being in his seat not be called upon, and when he returned to his seat he would  
150 notify me he had no questions and not to go back to him.



Q But isn't it also a fact and there are indications that people said: No questions? A Not necessarily under the circumstances I have outlined.

Q Would it refresh your recollection if I called your attention to instances where people were called out of the room and said they had no questions, and the only exception was if they found that they had and came back and that you called on them? A That happened, too.

Q In other words, it always happened when members were absent when called and came back and got in questions, that is also reflected in the printed hearing? A That is right in that when they have a question to ask.

THE COURT: Are you through?

MR. ROGGE: No, I will be about ten minutes more.

THE COURT: And I suppose you have some questions after that?

MR. PRATT: Yes, Your Honor, I do.

151

*Cross Examination Resumed*

BY MR. ROGGE:

Q Congressman, we were at the point of who were present at the time Mr. Christoffel testified.

Now, I wonder before coming over here you have consulted the originals of what are photostatic copies here, 3, 4, and 5? A I didn't do that this morning. I did some time ago.

Q When did you do that? A Oh, I think I asked my clerk about—

Q (Interposing) Speak up. A I believe I asked my clerk to show me the record of the attendance at that committee meeting the day I was subpoenaed to appear here in court.

Q For your observation? A That is right.

Q That has been within the last month? A That is right.

Q And when you stated your recollections as to  
 152 who was present, you were really running down the  
 list of congressmen that you remembered seeing on  
 the pages—on the originals of what is now Government's  
 Exhibit 5? A I refreshed my memory by that; that is  
 true.

Q How were these pages made up? They were made  
 up under your direction, I believe? A No, they were not.

Q You didn't give instructions to Mr. Sheppard to  
 keep a book like this? A That is the records of the min-  
 utes. No, I left that to him as Clerk of the Committee.

Q Did you give him any instructions with reference to  
 it? A No. He has had twenty years experience on the  
 Hill, and I left that to him to prepare.

Q Now, if I recall your previous testimony you placed  
 Congressman Buck there at the time Mr. Christoffel testi-  
 fied? A I said I thought—I had thought he was there, and  
 then later I corrected that when you showed me that rec-  
 ord.

Q That was with reference to Congressman Lucas. A  
 I thought it was with reference to Congressman Buck.

Q Well, we will take up both Congressmen, Buck and  
 Lucas.

Referring now to Exhibits 3, 4, and 5, 3 and 4 being the  
 tally sheets for morning and afternoon, and 5 being  
 153 something else, can you now state whether Congress-  
~~man~~ Buck was there when Mr. Christoffel testified?

A I would say, based on these records of the Committee,  
 that he was not present, and that I was in error in suggest-  
 ing that he was.

Q And as far as the afternoon session is concerned, and  
 that is when Mr. Christoffel was there, the same thing would  
 go for Congressman Lucas, if you will refer to the tally  
 sheet for the afternoon. A Of course, there are two dif-  
 ferent records here.

Q One is morning and one is afternoon. A The morn-  
 ing one shows Mr. Buck was not present and the afternoon

record shows that Mr. Buck was not present, on these two tally sheets; that is correct.

Q. And the tally sheet for the afternoon also shows that Congressman Lucas was not present; right? A. That is correct. The morning one shows he was present and the afternoon shows he was not present.

Q. Isn't it a fact, Mr. Congressman, that at the time when Mr. Christoffel testified only yourself as chairman and Congressmen Hoffman, McCowen, Kersten, Owens, Kearns, Nixon, and Kennedy, or a total of 8 were present, and that you, yourself, left during the questioning of Mr. Christoffel? A. I can't answer that statement. In the

first place, while it is true I left before Mr. Christoffel had completed his statement, I left only four questions  
154 before the executive session was called, and I don't know that they were the only members present.

My best judgment is that there were more members than that present during the time that Mr. Christoffel was being questioned.

Q. You are not sure about that? A. No, I am not. No, I am not certain of that; that is true.

Q. Now, let us go to another item. You will notice that this sheet which says, Government's Exhibit 5, that on Monday, March 3, the Committee met at 9 a.m. Do you see that? A. That is right.

Q. However, when you look at the printed record for March 3, we find the Committee met at 10 a.m.

MR. PRATT: I object to this, if the Court please. It seems entirely irrelevant, what happened on the following Monday.

MR. ROGGE: I have a point here. I can explain it, if the Court please.

THE COURT: What is the point?

MR. ROGGE: The point is as between these documents here—which I don't want to argue this in the presence of the jury. I will state it to Your Honor.

THE COURT: Very well.

155 (Thereupon, counsel approached the bench and the following proceedings were had, out of the hearing of the jury:)

MR. ROGGE: It is my recollection, if the Court please, that the previous witness made some comment that as between these documents and the stenographic notes, the stenographic notes would, of course, be more accurate. It was a discussion here and I want to bring out through this witness—

THE COURT: That is as to Monday, though, isn't it?

MR. ROGGE: It is on the same page. This is what the Government is going to rely on.

THE COURT: What happened on Monday?

MR. ROGGE: This is what I want to bring out from this witness, that these documents are not as accurate as the printed record on which the roll call appears.

THE COURT: I will sustain the objection.

MR. ROGGE: May I make an offer of proof, that the witness if permitted to answer the question—

THE COURT: How do you know what he is going to say?

MR. ROGGE: I don't know, Judge, but how can I protect myself on that?

THE COURT: I have overruled it, and if I am wrong you are still protected about it in the event it goes to a conclusion.

(Thereupon, counsel resumed their places at the trial table, and the following proceedings were had in open court:)

BY MR. ROGGE:

Q Congressman, you stated that the purpose of the inquiry that was being conducted on this Saturday, March 1, was for the purpose of getting up new legislation; is that correct? A That was one of the purposes of the meeting, yes.

Q Were there any other purposes than to work up new legislation? A Yes. You see, the Committee had been

authorized by House Resolution 111 in addition to holding hearings on legislative proposals to investigate racketeering in the labor movement as well.

Q Isn't it a fact that the purpose of this hearing, and isn't it true that the questioning which took place on Saturday, was as a result of suggestions made to you by the officials of Allis-Chalmers out in Milwaukee?

MR. PRATT: I object.

MR. PATTON: I object to that, if the Court please.

THE COURT: Sustained. I sustain the objection.

MR. ROGGE: I have another question along this line.

THE COURT: You may ask the question, then, and if there is objection I will rule on it.

BY MR. ROGGE:

157 Q Isn't it a fact that the preceding week, Mr. Congressman, the officials of this company had suggested to the Committee in open hearing that they wanted things arranged so that there could be a judicial proceeding against Christoffel?

MR. PRATT: The same objection.

THE COURT: Sustained.

BY MR. ROGGE:

Q And isn't it a fact that pursuant to this objective that none of the witnesses prior to the time when Mr. Buse and Mr. Thomas and Mr. Christoffel took the stand was put under oath?

MR. PATTON: The same objection.

THE COURT: Sustained.

BY MR. ROGGE:

Q Isn't it also a fact that the witnesses following these three witnesses who appeared there on behalf of Local 248, the witnesses following them, were likewise not put under oath.

THE COURT: Sustained.

Mr. Congressman, I would like to ask a question. After the Committee met in the afternoon, Saturday afternoon—

THE WITNESS: Yes.



THE COURT: —and a quorum was present, at any time during the hearings that afternoon was any suggestion made by any Committee member of a lack of quorum?

THE WITNESS: There wasn't.

158

THE COURT: The existence of a lack of quorum?

THE WITNESS: No, Your Honor, and I may say that is one reason why I have been careful at all times to maintain a quorum, because, frankly, in the early time of the hearing, in fact, the first day of the hearings, one of the members of the Committee made a point of no quorum at a time when there was no quorum, and I have made up my mind I was going to try to avoid that embarrassment in the future, if I could.

BY MR. ROGGE:

Q Congressman, are you here pursuant to subpoena?

A Yes, I am.

Q But, during the legislative session it would be your privilege not to observe that, so you are really here voluntarily, aren't you?

THE COURT: Sustained.

MR. ROGGE: That is all.

### *Redirect Examination*

BY MR. PATTON:

Q Mr. Congressman, had there been any suggestion of lack of a quorum it would have appeared in the printed record, would it not? A That is correct.

Q The reference to the testimony of Christoffel, beginning on page 2079 of the printed transcript and running through and including page 2101 of the printed transcript, a total of 22 printed pages, now, is it not

159 true, Mr. Congressman, that with the exception of two or three preliminary questions by yourself that that examination of the defendant Christoffel was conducted entirely by Congressman Hoffman? A That is my recollection.

Q Now, with reference to this testimony on cross-examination of the so-called go-around or the calling of congressmen by name, which would indicate a roll call, isn't it true, then, that in so far as pages 2079 and 2101 are concerned, and through that series of pages, that there is no indication that any other Congressman was called upon to examine the defendant Christoffel? A Including page 2101?

Q Pages 2079 through 2101. You understand my question? A That is whether anyone was called upon?

Q Yes. A To interrogate Mr. Christoffel.

Q Yes. A I don't believe anyone was.

Q Then that does indicate that during that period of time during which the defendant Christoffel was under examination by Congressman Hoffman, that other members of the Committee may or may not have been present? A Of course that is true.

Q So far as indicated in the record? A That is true.

Q Now, with reference to the suggested time at 160 which the testimony of Mr. Christoffel began, there was some suggestion that this testimony began in the afternoon session some time around 4 p.m. Do you recall that testimony on cross examination? A Yes, I do.

Q Now, this total of 22 pages in the printed record—first, let me call your attention to the notation of the adjournment of the Committee at the bottom of page 2101, showing that the Committee adjourned until the following Monday at 5:25 p.m., you were present, were you not, Mr. Congressman, during the testimony of Mr. Christoffel? A I was until about just a few seconds before the executive session was called, which was just prior to 5 o'clock.

Q And you were present, were you not, immediately after you administered the oath, and isn't it true—

MR. ROGGE: I object to all this leading, if the Court please. There is a direct way of asking those questions.

THE COURT: I think it is a little leading.

BY MR. PATTON:

Q Will you refer to the printed transcript, Mr. Congressman, beginning at page 2079 and state how many pages continued in that printed record of the statement made by Mr. Christoffel before the examination was begun by means of questions and answers? A Mr. Christoffel started his statement in the middle of page 2079 and continued 161 without interruption to page 2084.

Q Some approximately 5 pages; is that correct?

A That is right. That is right.

Q Leaving a total of approximately 17 pages of testimony by means of question and answer; is that correct? A That is correct.

Q Now, you observed the demeanor of the witness at that time, did you not? A I did.

Q You were able to and are able to say at this time, are you not, as to whether or not he was a fast witness or a slow witness?

MR. ROGGE: If the Court please, I don't know just what that means, and I say it is irrelevant anyway.

BY MR. PATTON:

Q Was he a fast-speaking witness or a slow-speaking witness?

MR. ROGGE: I object.

THE WITNESS: May I answer? I consider Mr. Christoffel was a fast speaker and that he had a very ready answer for every question that was asked of him.

BY MR. PATTON:

Q During the period of time, approximate 4 o'clock until the adjournment of the Committee at 5:25 in the 162 afternoon, or approximately one hour and twenty-five minutes, would you say from your knowledge on the occasion and the facts and circumstances at that time that that testimony of the defendant Christoffel could have been completed within that period of time? A Within a period of an hour?

Q An hour and twenty-five minutes, as shown by the record. A Of course this is all an estimate, and yet I have listened to a lot of congressional hearings and testimony. I think it would have been fairly difficult to have completed this testimony—that is, as recorded in the record, within that time.

Q You think it would have been what? A I think it would have been rather difficult to have completed it, even as fast a speaker as he was, in an hour and twenty-five minutes.

Q What I am trying to get at, Congressman, there are 22 pages of recorded testimony there in the record. The record shows the adjournment at 5:25 in the afternoon. Now, in your cross examination by Mr. Rogge there was an estimate made by you, I believe, that the testimony began at approximately 4 o'clock in the afternoon. A I think that was more Mr. Rogge's estimate than mine, and yet I couldn't dispute it. I was inclined to agree, perhaps,  
163 the time he had figured might be correct, but that is all conjecture on the part of both of us.

Q Then you arrived at your estimate that the testimony of the defendant Christoffel began at approximately 4 o'clock in the afternoon by means of suggestions made to you by counsel on cross-examination? A Yes, that is true; and I think I suggested—I also said that I thought it might have been a little before 4, perhaps a quarter of 4, even at half-past 3. I am by no means certain as to the time.

Q And you have no way of knowing that time other than by means of these various estimates, do you, Mr. Congressman? A I have no other means; no.

Q You have no reason, do you, Mr. Congressman, to doubt the authenticity of these Exhibits 3 and 4, the record of the Clerk of the Committee on Education and Labor, their correctness?

MR. ROGGE: Judge, I object. I wanted to go into that. Your Honor wouldn't let me. He didn't keep the records.

THE COURT: I sustain the objection.

BY MR. PATTON:

Q Is that the official record, Exhibit No. 5, of the House Committee on Education and Labor? A Are you referring to the one that is signed by Mr. 164 Sheppard?

Q Yes. A Yes, I recognize the signature, even though it is a photostatic copy, and I say it is.

Q That is the official record of the Committee? A It is.

MR. PATTON: That is all.

*Recross Examination*

BY MR. ROGGE:

Q I don't like to prolong that, Congressman, but I want to get back to the time element again. After all, the only time we have available at this time is 2:15 to 5:25; that is right, isn't it? A Yes.

Q I am perfectly happy to work backwards. Did I understand you to say that you thought the 22 pages from 2079 to 2101, that you doubt whether that could take place in an hour and twenty-five minutes? A There is some question in my mind, and yet I am not posing as an expert on how long it takes a witness to testify and be interrogated by a congressional committee, even though I have seen a lot of it, or heard a lot of it.

Q Let us go backwards. I mean your testimony is now it took at least an hour and twenty-five minutes; is that right? A I would say it did, yes.

165 Q You would take it back even to a quarter of 4, is that right? A This is guesswork on my part.

Q I am not trying to trap you, Mr. Congressman. I just want to get a fair statement in here. A I would say—I would say about a quarter of 4, and I still insist that is utter guesswork.

Q All right.



Now, if it took that period of time for Mr. Christoffel's 22 pages, then how long do you say it took for Mr. Thomas' 30 pages, and you will notice that is all statement and testimony—there are no insertions as you sometimes have in the record. A There is one there.

Q Yes, there is one. I will take it back. It covers two and one-half pages; right? A Nearly three pages.

Q All right. Three pages. So, you take 3 pages away from 30 pages and you have 27 pages. Now, how long did the 27 pages of Mr. Thomas take? A I would say that took longer than Mr. Christoffel's.

Q Well, we are already back at a quarter of 4. We allowed one hour and twenty-five minutes and a quarter of an hour; that is one hour and forty minutes; right, for

Mr. Christoffel? A That is right.

166 Q So, if we had an hour and forty minutes for that, and taking us back to a quarter of 4, we take at least that amount of time, one hour and forty minutes back of a quarter of 4 and we have us back almost to two o'clock, when the Committee first started after 2, didn't it? A That is right.

Q And we still haven't taken account of Mr. Buse's, whom you allowed 15 minutes to a half an hour. Mr. Buse was on in the afternoon, too, wasn't he? A Yes, I think he was.

Q I mean you can— A (Interposing) Yes.

Q —see for yourself? A That is right; that is right.

Q So to place Mr. Christoffel's testimony at 4, beginning at 4 o'clock or thereabouts, isn't an unfair statement, is it? A I don't think it is, no.

MR. ROGGE: That is all.

THE COURT: Thank you, Mr. Congressman.

(The witness was excused.)

MR. PRATT: If the Court please, we now renew the offer of the transcript of the testimony, which is Exhibit No. —

MR. ROGGE (interposing): I don't want to try Your Honor's patience, but I have prepared this very carefully. I have a firm idea on it. I would like to be heard on it, Judge.

THE COURT: I will reserve my decision on that.

MR. PRATT: I beg pardon?

THE COURT: The Court will reserve decision on that. I want to have the opportunity—

You have other witnesses, Mr. Pratt?

MR. PRATT: I wanted to read from the transcript at this time.

THE COURT: Suppose you withhold that for the time being.

MR. PRATT: Very well.

192 (The following proceedings were had; the jury not being present:)

THE COURT:

193 Now, I would like to take up this matter of the question of the quorum.

At the session yesterday there was introduced into the evidence the court reporter's stenographic notes, but there was an objection raised to the introduction at the time of the transcript on the theory that the Government had not shown that at the time that the defendant was sworn and testified there was a quorum of that Committee present.

The Government has shown that at the time when the Committee went into session in the afternoon at 2:15 a quorum was present; that during the entire session no point was ever raised as to a lack of a quorum.

It is my opinion, therefore, that under those circumstances there is a legally constituted body.

I understand, Mr. Rogge, that you do not agree.

MR. ROGGE: I would like to be heard on it.

THE COURT: Just a minute. And I will now hear you on that subject.

MR. ROGGE: May it please the Court, to Your Honor's statement I would also like to add this, that the offered transcript, I submit, itself shows something which is even more accurate than the tally sheets which Mr.

McArthur got up, not exactly at 2:15, he said a few  
194 minutes—he said a minute or two after. I think it was probably later than that.

It was shown that there were discrepancies between Government Exhibit 5, the journal page, or whatever it was, and the printed transcript, and it is my recollection of the testimony when that was called to Mr. McArthur's attention he said, "Well, the stenographic transcript would be the more accurate one, anyway."

If you go to this stenographic transcript, and bear in mind that there was a roll call on the witness Thomas, that roll call showed, and I submit it is even a higher grade of evidence than the tally sheet, that roll call showed that at the time of the witness Thomas, there were but eleven, and the tally was that, I think, thirteen members were there at 2:15 p. m.

If, and I am going to take up in a moment whether there is, in the first place, a presumption of the continuance of a quorum, I am going to show, I think, under the authorities that that is not true, but even assuming for a moment that were true, I say if there is any such presumption it ended at the time of the witness Thomas, when there was what Congressman Hartley himself admitted was in effect a roll call, and he also stated that he followed his set procedure religiously, and that he followed it on this particular Saturday, so that I think the latest evidence you have in the record is that at the time of the witness Thomas,

who just preceded Mr. Christoffel, there were eleven  
195 Committee members present, and Congressman Hartley himself stated that he didn't know of anybody else who came in.

As a matter of fact, his testimony placed two people there, as to both of which, namely, Congressman Buck and Congressman Lucas, he admitted he was in error.

THE COURT: Mr. Rogge, do you think a legally constituted body, where there is a majority meeting, and resolutions and certain things are accomplished in the past, and no question has been made of a lack of a quorum, that some months after they perform their official duties, someone can say, "This thing is null and void, there wasn't any quorum"?

MR. ROGGE: Absolutely. It is done in all these cases which we have cited in our memorandum, and, as a matter of fact, saying that there wasn't an objection made as to a lack of quorum, the objection is made right now.

Certainly these Congressmen by being absent, they can waive it among themselves, but they can't waive an American citizen into a felony.

THE COURT: I don't think it is going to waive him into a felony.

MR. ROGGE: That is in effect what it attempts to do.

Your Honor says, "Well, they didn't raise the question of a lack of quorum."

Maybe they didn't, but the defendant is.

THE COURT: All right. Go ahead.

196 MR. ROGGE: Now I am not going into all the many cases, if the Court please, but I do want to begin by calling Your Honor's attention to one ruling which arose in the House of Representatives itself.

This is one that arose on May 17, 1918, and the question arose—this is on page 10 of the memorandum—as to whether a quorum of a House Committee had been present at a meeting called to consider a pending bill.

And Mr. Houston said:

"The committee was called and met, and six or seven members were in the room at a time—I am not sure of just the number. It requires nine to make a quorum. There were not nine present in the room at any given time, but they came into the room,"—and I think that is what happened here, even as to the eleven.

"cast their vote, told how they wanted to be recorded, and went to attend to their business. There was an attendance of a quorum; they were not all present in the room at any one time. . . ."

"The chair does not think"—

This is the speaker.

"that is a committee meeting. On pages 396 and 397 of the Rule Book, beginning on page 395, the chair rendered an elaborate opinion on the very same subject 197 matter, after a most careful scrutiny and consideration. A committee sits as a unit and you cannot get a bill up here by getting your report signed by various members of the committee or any other way except by a formal vote of the committee as a committee, a quorum being present, if anybody insists on the rule."

Anybody.

THE COURT: When? Six months later?

MR. ROGGE: Yes, if the Court please. Yes.

THE COURT: All right. Go ahead.

MR. ROGGE: Now, another member then suggested:

"This is the way this thing is done in almost every committee of the House at some time. A meeting is regularly called. The Chairman is present. The members of the committee begin to come in, one after another, some remaining and others asking to be recorded as present. Finally the vote shows that a quorum is present though actually a quorum may not be physically present. The point of no quorum is not made in the committee and the business of the committee is proceeded with. According to the committee records, a quorum is physically present. That evidence of the record ought not to be assailed"—

And this, if Your Honor please, was subsequently. 198 It was not at the time.

"That evidence of the record ought not to be assailed in this body but should be regarded as final.

There is no evidence there in the committee there was a charge of no quorum.



"We do business in the House and Committee of the Whole every day without a quorum but a quorum is presumed to be present."

And what does the Speaker say?

"Now, it may be true and I have no sort of doubt it is absolutely true that this process of one coming in and another dropping out goes on in these committees. That is all right as nobody raises the point, but when the point is raised"—

And, if Your Honor please, this was after a committee had met and had come back to the House.

"but when the point is raised,"—

And it was subsequently.

"you have to consider it according to the rule.

When the point is raised"—

And on the preceding page the Speaker said:

"you have got to have a quorum acting as a quorum."

And that has been followed in other cases.

There was another on June 22, 1922, Speaker Gillette, and it is borne out by the Reorganization Act which provides—first, this is Rule 133 (d) of the Rules of the House, saying:

"No measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present."

I mean that is written right into the law, and I am not going to pause on this, but there was a previous case where testimony had been taken, it just occurs to me—this is page 9, where testimony had been taken at which less than a quorum was present. What did they do? They went back and took it over, and the objection was later made.

That is in Hind's Precedents, which work indicates on one occasion at least the validity of testimony taken when a quorum of the committee was not present has been denied, and there the objection was raised subsequently, and what happened?

Because of the defect, and pursuant to a committee resolution the witnesses who testified had to reappear before a quorum of the committee.

The point in neither one of these cases was raised at the time of the committee hearing. The committee went blithely on its way and at a later point an objection was raised, "ah, there wasn't a quorum present," and the point was held well taken, and it is written in the law.

Now, I want to go to the suggestion, and this begins in a later part of the brief, I am going to go over the many cases, because I really think it is so well established

200 —they relate to legislative bodies, they relate to municipal bodies, they relate to State legislatures, they relate to judicial bodies, they relate to an incorporated association, they relate to every kind of situation, involving, even, in some of the cases the specific crime of perjury. We have a horse-cow case. The point was made that a quorum was not present and it was held that what happened amounted to nothing, and that in such cases, where it was alleged that perjury had been committed, the court held in the absence of a quorum, even if there had been false swearing, it was not perjury.

As a matter of fact, there is one case in this District itself, *United States vs. Stewart*—

Incidentally, I should like to have Mr. Pratt furnish me with the copy of an instruction that he apparently got in that case. I know we both looked for the instruction in that case, a case for which I prepared the trial memorandum, but I wasn't in court, in which the court to my recollection charged the jury that the crime of perjury could not be committed unless at the time of the swearing and at the time of the alleged perjurious testimony a majority, a quorum—and in that case my recollection is the committee was fifteen, and the letter Mr. Pratt handed Your Honor bears that out—the Judge instructed the jury unless there were eight members physically present, and

the Government has proved that beyond a reasonable doubt, unless that situation prevails, you must  
201 return a verdict of not guilty, and the verdict was not guilty in that case.

Now, on any particular presumption we have to remember that in Point IV of this memorandum—I think, in the first place, there isn't any presumption of a quorum, or any presumption that a quorum having been established at one particular point of time continues.

And I think that that is well indicated in this summary statement by Wigmore in his treatise of evidence.

He says:

“The general experience that a rule of official duty, or a requirement of legal conditions, is fulfilled by those upon whom it is incumbent has given rise occasionally to a presumption of due performance of official duty. This presumption is more often mentioned than enforced; and its scope as a real presumption is indefinite and hardly capable of reduction to rules.

“It may be said that most of the instances of its application are found attended by several conditions; first, that the matter is more or less in the past, and incapable of easily procured evidence; secondly, that it involves a mere formality or detail of required procedure, in the routine of a public officer's action; next, that it involves to  
202 some extent the security of apparently vested rights, so that the presumption will serve to prevent an unwholesome uncertainty; and, finally,”—

And this is especially important, if the Court please:

“that the circumstances of the particular case add some element of probability.”

Now, if we were to go on that test, “some element of probability,” Your Honor is familiar with hearings of Congressional Committees. The probabilities are that very often there is not a quorum present, because that is usually the way they do business. So the existence of a quorum is not a mere formality or detail. It does not in-

volve the security of apparently vested rights and the circumstances of the particular case do not add some element of probability.

So Wigmore recognizes what we all know about the meetings of committees, and that the actual experience negatives any presumption of a quorum, and went on to say this:

"The following limitations may therefore be said to apply: . . . the powers can be exercised by a committee delegated for the purpose; but when such a committee has been designated, the delegated power is limited to the committee acting as such. The Judiciary are entitled to define and declare the limitations of the power."

And he goes on to suggest in a footnote that:

203 "It would follow from this proposition that a question by a single member only of the committee, or by a subcommittee, need not be answered."

And he goes on to add this, and he wrote this before the investigations of the past year:

"In view of the extravagant use of committee investigations by the Federal Senate, this limitation ought to be made an issue for judicial decision."

I think the language would be much stronger were he revising the edition today.

I say to Your Honor that the cases uniformly sustain the conclusion that the presumption of official regularity does not apply, does not suffice as proof of the existence of a quorum necessary for effective action by a multiple-member agency, and we have cited a number of cases on it.

I am not going to call your attention to all of them, but there is this case, the City of Benwood vs. Wheeling, where the Court had this very pertinent language:

"That a quorum is present must appear upon its record as a fact, and not as a mere conclusion, or opinion, and the only way to make it appear as a fact is to set forth on the minutes the names of the persons in attendance.



When that is done at the beginning of the session, the status so established is presumed to continue"—

204 But, notice this:

"unless the contrary appears in some way upon the record."

And I say to Your Honor that the contrary does appear upon the record, on the roll call which took place on witness Thomas, when there were but eleven there.

So, in the first place, as I say, there isn't any presumption of a quorum, or that it continues, that if there was, it ended with that, and thereafter if you have any presumption, the presumption is that there was less than a quorum then, unless someone comes forward and says, "Oh, but some people came in."

And Congressman Hartley refused to say that.

"The attendance of a quorum is a condition precedent to everything. Until then there is an absolute incapacity to consider or act in any way upon any matter. When the body is legally convened and constituted, it has power to consider what is within its jurisdiction and authority, and to declare the existence of facts other than the fact of its own existence. Until it comes into existence, it cannot proceed nor make any record of its proceedings. It has no authority to make a record showing anything. Less than a quorum are without power to act or bind any body in any manner. Their action, being absolutely void,

205 may be ignored or attacked in any proceeding."

And there are other cases, too.

There is one in North Carolina which related to judicial bodies. There the court said:

"Now, by law, three Justices of the County Court at least are requisite to constitute a court, and therefore, it must appear by the record they keep of their proceedings, that such number was present. If it be said, that here the record purports to be the memorial of the acts of Cherokee County Court, and that, as three Justices are necessary to form a court, the implication is a fair, if not a necessary



one, that such court was held by three Justices; the answer is, that still it must appear, that there were three Justices, in order that we may see that the record was really made up under the authority of those who were competent to make it or have it made."

We have cited other cases, but I think that bears out my statement, namely, that there is in this situation neither a presumption of a quorum, nor a presumption, if it be established that a quorum once existed, that it continued, and I say in the third place, that if Your Honor says there are those abstract presumptions, that it ended with the testimony with reference to the roll call of  
206 the witness Thomas.

Now, I go on to one further point. I say to Your Honor that even if there is a presumption of a quorum or the presumption of a continuance of a quorum, both of which propositions I challenge, I say that nevertheless in this case where they come into conflict with the presumption of innocence, one of the oldest, the most sacred things in Anglo-American law, the presumption that a man is innocent until proven guilty beyond a reasonable doubt, that is with him and stays with him to the very end of the case, until the Government establishes, if it can, that he is guilty beyond a reasonable doubt, and that proof beyond a reasonable doubt includes proof in this case that thirteen members were there when he was sworn and thirteen members were there when he gave the allegedly perjurious testimony.

Now, there are many cases which have held when you have conflicting presumptions, the presumption of innocence prevails. There are many cases on that.

I would like to call Your Honor's attention to some of the things that the presumption of innocence has prevailed against:

The presumption of innocence has prevailed against the presumption of a woman's chastity; the presumption of

innocence has prevailed against the normal presumption of ownership arising from possession; it has prevailed  
 207 against the presumption of delivery of an instrument arising from the fact of possession by the party to whom delivery must be made; against the presumption that a check was made on the date and at the place stated therein; against the presumption that packages shipped from consignors to consignees contained articles which the latter expected to receive; and also, and this would apply again in this case, against the presumption of the continuance of a fact.

Now, I would like to call Your Honor's attention to some of the cases.

In the case of Commonwealth vs. Whittaker that involved the presumption of a woman's chastity, and it came into conflict with the presumption of innocence and the presumption of innocence prevailed.

The Court stated:

"The gist of the offense is in fraudulently enticing to a house of ill-fame for purposes of prostitution an unmarried woman of chaste life and conversation. If these women were of unchaste life and conversation no offense was committed within the meaning of the statute. Their chastity must therefore be established as laid in the indictment by affirmative proof. The defendant is presumed to be innocent until every material allegation necessary to constitute the offense charged is proven  
 208 beyond a reasonable doubt. To allow the proof of such an allegation to rest merely on the legal presumption that the women were chaste would be to permit the presumption in favor of the defendant's innocence of the offense charged to be overcome by another legal presumption in favor of the innocence of other persons not parties to this proceeding."

We are concerned here only with the defendant Christoffel and I say to Your Honor pursuant to an authority like that a presumption of innocence prevails against any sup-

posed presumption of the continuance of a quorum, a presumption that I don't think was there, and which was negative, anyway.

So, again, in *Walton v. State* there was an indictment for seduction, and there the court said, and held:

"The presumption of virtue in one citizen cannot work the condemnation of another in whose favor, when charged with crime, the law raises the presumption of innocence."

And in *State v. Shelley* there was an indictment for impersonating an elector, and it was contended there since the name of the person impersonated appeared on the registration book as a voter, and since there was a presumption that the registration—that is what the Government contended—that the registration proceedings were official acts and were regular, that the burden was  
209 on the accused to show that the party impersonated was not an elector, but the court held otherwise.

The lower court, however, had instructed:

"That if they believe from the evidence that the name of C, the party allegedly impersonated, appeared upon the registration book offered in evidence, then this fact is prima facie evidence that C was an elector."

But the reviewing court held otherwise, saying:

"Such a presumption cannot either overlook or overcome the presumption of innocence which in every case is to be regarded by the jury as a matter of evidence to the benefit of which the party is entitled."

Or, again, in *State v. Roswell*, there was a prosecution for petit larceny for stealing the property of S and the State offered no proof that the property stolen was S's property, but did come forward and show that it was in S's possession.

Now, in some situations possession would be enough for a presumption of ownership, probably less. The contention was that applied in criminal cases. The court said:

"Oh, no, not against the presumption of innocence."

210 The State contended possession of the bill alone was prima facie evidence of its ownership. Maybe that would be true in a civil case. The Court does say it:

"Such would be all-sufficient in a civil case, but this is not true in a criminal proceeding where the burden is on the State to prove every element of the offense charged beyond a reasonable doubt to the contrary. . . . Until the ownership is shown by something more than a mere presumption of law to the effect that possession is prima facie evidence of ownership, the matter is repealed and overcome by the presumption of innocence which attends the accused at all times throughout the trial. The Anglo-Saxon love of liberty culminates in the doctrine that all persons are presumed innocent of the offense charged until such presumption is overcome by showing a set of facts or circumstances which afford a legitimate inference to the contrary. As a rule, therefore, one may not be convicted upon a mere prima facie case being established through the medium of presumptions which are raised by the law, for one presumption of that character will not be allowed to overcome or destroy the effect of another." Especially the presumption of innocence.

There was another case in California, *People v. Scott*, which is interesting.

211 There was an indictment there of an offense of selling land twice and there the court held that the fact that the grantee under the alleged second sale had possession of the deed, that didn't raise the presumption that the deed had been delivered to him by the defendant, and did not raise the presumption as to the delivery of the deed.

Again there was an indictment for bigamy in *White vs. State*, and the court refused to allow the presumption of the continuance of life, and here again is the continuance of a situation, which did not prevail against the presumption of innocence.

And the court found:



"The death of the former spouse, if she had died prior to the time of the second marriage, or the fact that a divorce may have been obtained by the defendant before the celebration of the subsequent marriage, is not an affirmative defense. Proof that she still lives is an essential element of the crime charged. It is a vital part of the corpus delicti. To presume in a criminal prosecution for bigamy that a former spouse is still living at the time of the defendant's second marriage is to presume the existence of a material fact necessary to the proof as part of the State's case."

212 In another bigamy prosecution in *Dunlap v. State*, the court refused to conclude that a former spouse of the accused was living at the time of the allegedly bigamous marriage from the fact that she was alive four and a half years before the trial. There was proof she was alive at a period before the trial, and the State, apparently said there was a presumption she was still alive, but the court said:

"No, that comes into conflict with the presumption of innocence, and when it does, that presumption has to yield."

There are other cases. There is another case we have cited on this presumption involving a continuance of fact. In the case of conflicting presumptions, the presumption of the continuance of things, shall we call them, the presumptions of innocence are against.

A very striking case is *Nichols v. Mutual Life Insurance Company*, and I would say the presumption against suicide is very strong. Nevertheless, in that case the court stated: "... in a criminal case the presumption of innocence... is stronger than that against suicide."

Now, of course, and I am coming to some cases that the Government can cite, the presumption of innocence is to be distinguished—you have two situations. You have abstract presumptions, and if there is a presumption of the continuance of a quorum, or even the presumption of a quorum, those are abstract presumptions.



As against them there is not the slightest doubt under the authorities that the presumption of innocence prevails, but you do have a situation which is different from these abstract presumptions where you have a chain of evidence, you find, for instance, a dagger with blood on it, and certain fingerprints, and those fingerprints jibe with the fingerprints of a particular person.

The law permits inferences to be drawn. Those are different from the abstract presumptions, and that is an entirely different situation.

Now, there are many cases which talk about that presumption when what they are talking about are really those permissible inferences, and that is very clearly brought out in three cases, two of which the Government may cite. One of those is *Dunlop v. State*, 165 U. S. 486, where the defendant was charged with placing obscene literature in the mails for mailing and delivery in violation of the Federal statute, and there, as I recall the facts, it was shown that certain Federal employees had carried these, post office employees, from one place to another, and the court there allowed an inference to be drawn from the fact that these post office employees had carried this from one place to another that they had gotten it in the regular way in the mail.

214 That is an inference of fact from a chain of circumstances, and the court brings out the difference there between that kind of an inference, which, I may say, I think it was Mr. Justice Keller who wrote the opinion—it doesn't say—but the court in that case brings out very clearly the difference between one of these inferences, which he referred to as a presumption, and the kind of a presumption we are talking about here, which the court there labeled an abstract presumption.

And in a later Federal case that I am going to call to Your Honor's attention very briefly, it was pointed out what the court was talking about here was permissible inference.

The Supreme Court there said this:

"If it were broadly true that the presumption of innocence overrides every other presumption"—

And by presumption there the Court really meant inference of fact.

"... except those of sanity and knowledge of the law, it would be impossible to convict in any case upon circumstantial evidence, since the gist of such evidence is that certain facts may be inferred or presumed from proof of other facts. Thus, if property recently stolen be found in the possession of a certain person, it may be presumed that he stole it, and such presumption is sufficient  
215 to authorize the jury to convict, notwithstanding the presumption of his innocence. So, if a person be stabbed to death, and another, who was last seen in his company, were arrested near the spot with a bloody dagger in his possession, it would raise, in the absence of explanatory evidence, a presumption of the fact that he had killed him."

There they are talking about the links in a chain of evidence. True inferences are permissible.

"So, if it were shown that the shoes of an accused person were of peculiar size or shape, and footmarks were found in the mud or snow of corresponding size or shape, it would raise a presumption more or less strong according to the circumstances, that those marks had been made by the feet of the accused person."

We are all familiar with that type of case. It is true it is stated in some of the authorities, and here we come now to the kind of presumption that is involved in this case, if any presumption is involved at all:

"It is true that it is stated in some of the authorities that where there are conflicting presumptions, the presumption of innocence will prevail against the presumption  
216 of the continuance of life, the presumption of the continuance of things generally, the presumption of marriage and the presumption of chastity. But this

is said with reference to a class of presumptions which prevail independently of proof to rebut the presumption of the innocence, or what may be termed abstract presumptions."

Now, if there is any presumption of a quorum having been established, and I challenge even that fact, I don't think the evidence is particularly strong, but even if it be established there was a quorum at 2:15, if there is any presumption to be raised on that that the quorum continued, it would be what the Supreme Court would call one of these abstract presumptions, as against which the presumption of innocence prevails.

"Thus, in prosecutions for seduction, or for enticing an unmarried female to a house of ill-fame, it is necessary to aver and prove affirmatively the chastity of the female, notwithstanding the general presumption in favor of her chastity, since this general presumption is overridden by the presumption of the innocence of the defendant."

Now, another case which the Government may cite is *Wilson v. The United States*, where the accused, who was charged with murder, was found soon after the homicide in possession of property that belonged to the dead  
217 man, and there, again, you have something in the chain of circumstances, and the Supreme Court upheld the charge of the trial court to the jury that such possession required the accused to account for it to show that as far as he was concerned, the possession was innocent and honest.

Now, those two cases were, then, not instances where the presumption of innocence yielded to a like presumption. Instead, those cases involved—and we are all familiar with the type, they occur in every criminal case, reasonable inferences of fact. They don't involve presumption at all. I mean your proof A is true; very often the court will allow inference B to be drawn from that fact. But the so-called abstract presumptions are not founded upon factual experience but on a broad public

policy in favor of some scheme or pattern of things, and as Professor Wigmore pointed out, one of the things involved was that of a certain amount of probability.

Now, if you get down to the probability of a quorum being present on particular committees, the probabilities are just as good that they weren't present as that they were there.

The distinction between these factual inferences and the abstract presumptions was clearly brought out in a later Federal case, a decision in 1946 where the court in commenting on the Dunlop case said this:

218 "Sometimes such evidence has been loosely called a presumption of law, but it is more properly, if a presumption at all, only one of fact. On principle probably it had better be called merely a permissible inference to be drawn by the jury or the judge as the case may be."

And of course that is what it is, and that is what was involved in both those Supreme Court cases.

You have the situation that while factual inferences may be made upon a criminal prosecution where it is part of a chain of evidence, the abstract presumption of innocence prevails over all the other abstract presumptions, and they are various. Not only the continuance of things, but the continuance of life, chastity, the regularity of official acts and proceedings, whatever other abstract presumptions there are, the presumption of innocence prevails.

And the reason for that, if the Court please, is very simple.

As I stated to Your Honor earlier, there is nothing more sacred in our law than the presumption of innocence, and I don't know how long that hasn't been a presumption. As between any presumption or philosophy, you draw the presumption he is innocent until proved guilty beyond a reasonable doubt when that comes into conflict with any of the other abstract presumptions—the presumption of innocence prevails.

219 Now, in that same connection I would like to call Your Honor's attention to a case in the Court of Appeals here, the Court of Appeals for the District of Columbia in *Barry against Hall*, decided in 1938, where the Court said:

"Moreover, the presumption of regularity (of official acts of public officers) does not extend to acts involving the forfeiture of an individual's personal rights."

So I say by way of summary to Your Honor, that even if it had been established in this case that there were a quorum there at 2:15, I say to Your Honor that the very transcript which the Government is offering, and which I say to Your Honor is even a better class of evidence and was admitted to be so by the witness McArthur, that that very transcript itself shows at a later point in the proceedings, namely, at the time of the examination of the witness Thomas, who was the one who immediately preceded the defendant Christoffel, that at that time, in accordance with the practice which Congressman Hartley said he religiously followed, there were shown to be only 11 there, and that is a maximum number, because I think it is inconceivable to think that late on a Saturday afternoon, and, really, those questions and answers took it closer to 5 o'clock than 4 o'clock, that there were even 11 Congressmen there. As a matter of fact, Congressman

720 Hartley himself admitted two of those he placed there, namely, Congressman Buck and Congressman Lucas, that he had been in error as to those. He further stated when I asked him did he know whether anyone else came in after that time, he couldn't name a single person, so that your factual situation really is there were 11, and there is no evidence that there was any more. He also stated—he said previously sometimes people had whispered in his ear about passing. He admitted two things. He admitted first many such instances appeared on the record, and I can show Your Honor instances where they did. But he also said on this Saturday no



one had whispered in his ear that they wanted to be passed so I think Your Honor can take it this roll call, -- that is in effect what it was, at the time of Thomas fixes the maximum number that were present there on any subsequent time, but even if there were any presumption of a quorum I say to Your Honor that it is no more than an abstract presumption, and just as the Court of Appeals said in Barry against Hall, that the presumption of regularity does not extend to acts involving the forfeiture of an individual's personal rights, so I say here such an abstract presumption would not prevail against the presumption of innocence, because more than a forfeiture of rights is a stake, for an individual's liberty is at stake.

So I say to Your Honor on the basis of the evidence which has been offered to Your Honor, and on the basis of the evidence which is already before Your Honor  
 221 that Your Honor should rule that it has already been shown a quorum was not present, because the roll call on the examination of the witness Thomas showed that at any event Your Honor should exclude this evidence and keep on excluding it, except for the purpose of showing there was not a quorum and there I don't make any objection to it being offered for that purpose. But Your Honor should continue to exclude this evidence until such a point of time as the Government has shown beyond a reasonable doubt that at the time when Mr. Christoffel was sworn and at the time when he gave the allegedly perjurious testimony that there were 13 members of that Committee actually all present at the same time, and it just won't show at that hour of 5 o'clock on a Saturday afternoon.

Thank you.

MR. PRATT: If it please the Court, in my judgment Mr. Rogge's argument is premature.

The argument might well be made on a motion for a directed verdict, but at this point in the trial the Government has established a prima facie case showing that there was a quorum present of this Committee.

The record, the journal of the Committee, shows it, the slips, the tally slips show it, the testimony of the chairman shows it, and surely we have a prima facie case of a quorum.

Now, as far as the Committee journal is concerned, there are plenty of authorities to the effect that that can-  
222 not be impeached.

Now, for the purpose of this present situation we are not claiming that the legislative acts or the acts of the House Committee are presumed to be regular. We have furnished the definite proof of the regularity of the proceedings by the journal of the Committee, by the testimony of the chairman, and, as a matter of fact, if there is any contradiction in the testimony of Mr. McArthur, contradiction between his testimony and the record, he will not be permitted under the authorities to impeach his own record by his oral testimony, and there are plenty of authorities on that subject.

Now, as far as I said at the outset, in my judgment the argument of Mr. Rogge is entirely premature. To address an argument of that sort to the Court at the conclusion of all the Government's evidence might be entirely another thing, but at this time it is certainly premature.

I have a lot of authorities here on the question of the possibility and the propriety of attempting to impeach the records of a legislative body, and I think it is almost unnecessary to refer to them.

But to get down to this point that the law of this case or the law of this District relating to a situation of this sort has been made by the decision upon the charge of Justice Bailey in the Stewart case 20 years ago.

Now, in that case he charged the jury, speaking  
223 of the Committee:

"If such a Committee so met, that is, if eight members did meet and thereafter during the progress of the hearing some of them left early or otherwise and no question was raised as to the lack of a quorum then the

fact that the majority did not remain there would not affect for the purposes of this case the existence of that Committee as a competent tribunal. But before the oath was administered and before the testimony of the defendant was given there must have been as many as eight members of that Committee present."

"There can't be the slightest doubt but that at the outset of this hearing on that Saturday-afternoon there was a quorum present and under the law as expressed by Justice Bailey certainly for the purposes of the case to this point that is all that is necessary."

"I don't think it is necessary to expound this proposition any further. It seems so perfectly clear that at this point of the case we are entitled to have his transcript in evidence."

MR. ROGGE: You can impeach records, Judge. That is an absolute absurdity. I can call your attention to a couple of cases cited in the brief. One of them is *Ralls* against Wyand, 40 Oklahoma, where the Court said:

"Can it be that, by a legal fiction, the legislature will be deemed in session when, in fact, there is no such organized or assembled body?"

This is page 12.

"How can a body be in session when it is not in session? Is the matter of session a fiction of the law and a semblance of duty done or discharged when there is no one present to do the duty, or even present to perfect or suggest when should or should not be done?"

There are many other cases that negative the general statement that Mr. Pratt made to you without the citation of any authorities at all.

And, incidentally, I would like, if he can furnish it to me, because I have tried to locate it in Archives but I can't.

I recall Your Honor's remembering that instruction yesterday evening, and I had the recollection there were addi-

tional matters, and then on Mr. Pratt's reading this morning—I wonder if he could furnish me a copy of that?

THE COURT: I think so.

The motion to exclude the transcript is overruled, and it will be admitted.

(The transcript previously marked Government's Exhibit No. 6 for Identification was received in evidence.)

THE COURT: Get the jury in.

(The jury returned to the court room.)

225 MR. PRATT: If the Court please, as a matter of convenience I want to also offer in evidence the portion of the printed transcript, printed by the Government, by the Government Printing Office.

THE COURT: Is that the one you used, Mr. Rogge?

MR. ROGGE: That is right, Judge, and although there are a number of changes between that and the typewritten transcript, apparently what happened is that corrections were made. I don't make any point on the quality of the evidence. I make the same point to this I made to the other one, the absence of a quorum.

THE COURT: It may be admitted.

(The document marked Government's Exhibit No. 8 for Identification was received in evidence.)

244 *Fred L. McStroul*

252 *Cross Examination*

BY MR. ROGGE:

Q Mr. McStroul, you were an officer in Local 248 from when to when? A From the inception of the union until October, '47.

Q That would be from 1936 or 1937? A '36 it would

be. We formerly had a Federal Union, and from the Federal Union, that was an A. F. of L. Federal Union, and we went into the CIO.

It was up until 1947, October.

Q And you had your elections in February or March? Was it one month or the other or could it be either one? A It could have been either one at different times.

Q And Mr. Christoffel remained president until February or March of '44; is that correct? A I believe so.

Q And then on his going into service, the union as a mark of esteem made him what you call honorary president; is that right? A Yes, sir.

Q When was that? A Shortly before he went into the armed services.

Q When was that, in '44? A I believe that was; that would be the year.

Q And that is an office, or I mean that honorary title he has held since? A Yes, sir.

Q Now, in your position were you present at the March 1, 1947, hearing which took place at the House Committee on Education and Labor? A I was.

Q With whom were you there? A I was there with some of my fellow officers and international representatives.

Q Name them. A I think there was Mr. Buse, Mr. Christoffel, and I am not sure if Mr. Laidwig was there. I think Mr. Dumbic was there, and Mr. R. J. Thomas of the international union. He was vice president, and there were several other international representatives whose names I don't remember.

Q Were you there on Saturday afternoon when Mr. Christoffel made his statement?

MR. PRATT: I object.

THE COURT: I will allow him to answer.

THE WITNESS: I was.

BY MR. ROGGE.

Q About what time did Mr. Christoffel begin to make his statement? A It would be somewhere around 4 o'clock or thereabouts.



Q Can you draw me a chart of where and you  
254 and Mr. Christoffel was sitting?

MR. PRATT: This is defense matter we are having now. This is not within the scope of the direct examination.

THE COURT: I do not think it is.

MR. ROGGE: I will make him my own witness then. We haven't the funds to bring him back later. I will be very brief.

THE COURT: Very well.

MR. ROGGE: May I have this marked Defendant's Exhibit No. 1 for identification?

(Thereupon a paper writing was marked Defendant's Exhibit No. 1 for identification.)

BY MR. ROGGE:

Q Now, did you mark on this chart where you were sitting by any designation? A I made a circle where I was sitting.

Q Write your last name out. A Is that all right?

Q That is all right, yes.

Now, I call your attention to three pages in this Government exhibit here, and I ask you to look at the bottom of page 2091, 2092, 2093, and 2094.

Now, can you tell me about what time it was that the question and answers that were listed on page 2094 took place? A Oh, it would be around 4:30 of that day.  
255 because of the fact it would take him some time to read the briefs. We had some briefs prepared for him to read, a statement.

Q Did Mr. Christoffel make a statement? A Yes, sir.

Q Did Mr. Thomas make a statement? A Yes, sir.

Q And then Mr. Thomas was examined? A Yes, sir.

Q Now, at the time that the questions and answers which appear on pages 2094 and 2095 took place, was Congressman Lesinsky present?

BY THE COURT:

Q Don't you know without looking at the book? A Well, I wanted to refresh my memory as to incidents that occurred at that particular moment.

Q Do you have any independent recollection of the Congressman being there? A I know that he wasn't there at a certain time.

Q What time? A Well, there was a discussion between Mr. Hoffman—Mr. Hoffman asked questions of Mr. Christoffel dealing with the question of turning the strike situation over to the House Labor Committee.

BY MR. ROGGE:

256 Q What do you mean by that turning it over? A Let them handle it, and they said the entire question.

Q Arbitrate it? A Yes, sir.

BY THE COURT:

Q There was a time when the Congressman was there? A He was. I remember him being there when Mr. Thomas was being questioned.

BY MR. ROGGE:

Q Now, I am asking you, Mr. McStroul, whether he was present at the time the questions and answers on page 2094 were asked.

BY THE COURT:

Q Can you answer that question without referring to that record? A I don't know what questions were asked.

Q Were you there when Mr. Christoffel testified? A He said on page 2094.

MR. ROGGE: He can't just say. He was refreshing his recollection, but I know what I think the facts are, Judge, and I have to call his attention to specific questions.

BY THE COURT:

Q You were there when the defendant testified, weren't you? A Yes, sir.

257 Q Well, the question was whether the Congressman was there.

MR. ROGGE: My question is: Was the Congressman there when the questions and answers took place that the Government read to the jury.

THE COURT: That was at the outset.

MR. ROGGE: This is the last part of his testimony, from the pages of that testimony.

BY THE COURT:

Q You were there when the committee concluded, weren't you? A Yes, sir.

Q Can you answer that question?

MR. ROGGE: I prefer to put it in my own way.

THE COURT: I understand you do but I want him to answer this question.

MR. ROGGE: All right.

THE WITNESS: All I can say is that there was a time I wanted to send a note to Mr. Lesinsky regarding questions. Mr. Hoffman was asking him trying to emphasize the point that the Committee take over the question of conciliation or arbitration, or anything to settle the strike, and he wasn't there.

BY MR. ROGGE:

Q When you say he wasn't there, whom do you  
258 mean? A Mr. Lesinsky.

Q All right. Now, can you tell me whether that incident to which you now refer took place prior, or at the time, or after? Do you understand the question, Mr. McStroul? A I don't know. What you say is prior or at the time.

Q Do you know whether the incident to which you have just referred took place prior to the time when the questions that appear on page 2094 and the answer that appear there occurred, and you may look at the preceding pages if you need to in order to answer the question.

MR. PATTON: We are now permitting him to refresh his recollection from a record he didn't make or had no part in making. It is improper.

MR. ROGGE: I think it is proper. I will approach the bench on it.

MR. PATTON: He cannot refresh it from the record he didn't make.

MR. ROGGE: He may refresh it from any document and counsel knows that is the law.

THE COURT: Come to the bench.

(Thereupon, counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

259 MR. ROGGE: I will tell you what took place at the time. There was a discussion about arbitrating it, which occurred prior to the time of these questions.

MR. PRATT: It wasn't when Christoffel was on the stand, was it?

MR. ROGGE: It certainly was. The question is simple. At the time when he wanted to pass a note to Congressman Lesinsky, at the time when these questions took place, whether he was there.

MR. PATTON: The record speaks for itself.

THE COURT: You are going into the defense now.

MR. ROGGE: That is right, but we haven't the money to bring this witness back.

THE COURT: Well, let him stay here. I think we should conduct the trial in an orderly fashion and I do not want to confuse the jury by this.

MR. ROGGE: It is a subject they have gone into, and I haven't the money to keep this man here. I haven't the money to pay him five dollars a day that the Government does.

THE COURT: The union will pay it, won't they?

MR. ROGGE: No.

THE COURT: They put up \$5,000 in cash for bond, and the Judge reduced it.

MR. SOBEL: Yes, but we got a telegram saying we cannot use that for any purpose. I will show you the telegram.

260 THE COURT: I think I will sustain the objection. I don't think the Government's case is going to last indefinitely.

MR. ROGGE: Well, I have made concessions to the Government all the time. When I want a little concession, when I haven't the money, the Government doesn't yield to it.

MR. PRATT: The Government will keep him. We won't discharge him as a witness.

MR. ROGGE: That is not sufficient because they only get five dollars a day, and the people tell me that doesn't mean anything.

THE COURT: I think that is all right.

MR. ROGGE: I can say this: I have made concessions to the Government before, but I have made my last one. That is a reasonable request to ask the witness when he is on the stand, to ask him on a subject that they have already gone into.

I have only a few more questions, and I can't see that they should now object.

361 BY MR. ROGGE:

Q Mr. McStroul, my question to you was whether at the time of the incident which you last related, whether that occurred prior to the questions and answers which took place and are recorded on page 2094? A The incident took place prior to that time.

Q Now, at that time that you wanted to hand this note to Congressman Lesinsky, who was present on the Democratic side? A To the best of my recollection, there was—if it was just only one fellow present on the Democratic side that I can remember, and that was Mr. Kennedy, Congressman Kennedy.

Q So you had this space of vacant chairs bounded on the one side by Congressman Kennedy and on the other side by whom?

MR. PRATT: I object to the form of the question.

THE COURT: I sustain the objection.

MR. ROGGE: I will withdraw that.

BY MR. ROGGE:

Q I will withdraw that. Down at one end you had Congressman Kennedy? A On the far end; yes.

Q And then who was the next man who was present? A To the best of my recollection, there was Mr. Hoffman was the next one present. He was Chairman at that time.



Q Can you indicate on this chart where Congressman Kennedy sat and where Congressman Hoffman sat? A (The witness complied with the request.)

Q At the time that Mr. Christoffel was making his statement right about in that period of time and before the questioning began, at least before the questions that appear on 2094, did you see any members of the Republican side leave? A On several occasions some of them left and some of them came back, and some others left and some of them didn't come back.

Q Now, was there anyone who left that didn't come back? A Well, Mr. Hartley himself, if I recollect correctly, was one of them.

Q Anybody else? A Well, I would not know his name.

Q Where did he sit? A He sat close to Mr. Nixon.

Q Where did Mr. Nixon sit? Can you indicate his place on that chart? A He sat on the far end of the Republican side.

Q In other words, Mr. Nixon sat at the far end of the Republican side, and Congressman Kennedy sat at the far end of the Democratic side? A Not all the time. Mr. Kennedy was there, and there was one fellow further than Mr. Kennedy, Mr. Lucas from Texas.

Q Was he there? A He wasn't there in the afternoon, no, sir, but he was there prior to that. He was there when Mr. Buse testified.

264 Q Now, who was the man that left, the man that sat beside Congressman Nixon? A Yes, sir.

Q Did he come back? A No, sir.

Q At what point of time did Congressman Hartley leave? A Well, after Chris read his brief, and then Mr. Hartley called upon Mr. Hoffman, he was the first one he called upon to ask questions of Mr. Christoffel.

He started asking him a number of questions, and then the incident occurred when I was told to move away from Mr. Christoffel, and Mr. Hartley then told me that I would have an opportunity to speak my piece, which I never got, though, and right after that Mr. Hartley left.

Q At the time that the questions and answers which occurred on page 2094 were asked, took place, how many members of the Committee were present? A Well, I remember at the time that Mr. Hoffman told me to move, to leave that particular spot, and—

BY THE COURT:

Q (Interposing). Just answer the question propounded by counsel. A Yes, sir. You mean, as far as time on the clock is concerned?

265 Q No. It is not a question of what happened when you moved your seat.

The question that counsel wants to know is how many members were present. A Well, the way I remember the incident, it is because they asked me—

MR. PRATT (interposing): I object.

THE COURT: I sustain the objection.

BY MR. ROGGE:

Q Answer the question first, Mr. McStroul. At the time the questions and answers which occur at page 2094—do you have those in mind? A Yes.

Q At the time those took place, how many members of the Committee, the House Committee on Education and Labor were present? A Well, shortly before that there was about nine of them there.

MR. PATTON: I object. It is not responsive.

THE COURT: Sustained; the objection is sustained.

BY MR. ROGGE:

Q And about that time; how many were present? A About nine.

BY THE COURT:

266 Q Were you there when the session opened at 2:15 in the afternoon? A Yes, sir.

Q How many members were present then? A Well, they all weren't there because I wanted to see Mr. Lucas and he wasn't there in the afternoon.

Q How many were there? A I didn't count them but there could not have been very many, more than nine.

MR. PRATT: I object.

BY THE COURT:

Q You say you didn't count them? A Not at that time.

Q Did you count them when the nine were there? A Yes, sir.

BY MR. ROGGE:

Q And subsequently to the time when you placed the nine there, at any subsequent time to that in the rest of the afternoon, was there any time when there were more than nine present? A Not to the best of my recollection.

Q At any time after that period of time when you fixed the nine as there, were there less than nine there? A Oh, yeah; oh, yes, sir.

Q When was that and how many were there? A When the meeting, when they recessed around 5 o'clock, whenever it was, it was just a handful of men around there.

Q How many? A Oh, less than seven; that I am fairly sure of.

BY THE COURT:

Q Six? A About six.

Q Who were they? A Mr. Hoffman, Mr. Nixon, Mr. Kennedy. It was either Mr. Schwabe or Mr. — it was Mr. McCombs, something like that.

BY MR. ROGGE:

Q What was that? A I think it was—he was the fellow that sat next to Mr. Schwabe because Mr. Schwabe talked to him prior to that?

Y McCowen? A McCowen. I think that is the name. I think Mr. Owens was there from Illinois.

BY THE COURT:

Q Is that all? A That is all I can remember.

Q How about Mr. Kersten? A I believe he was there.

Q He was there? A I think so. I wouldn't swear to it, though.

THE COURT: Very well.

268

MR. ROGGE: That is all.

*Redirect Examination*

BY MR. PRATT:

Q Now, Mr. McStroul, you have been a very close intimate friend of Mr. Christoffel for many years, haven't you? A I have been a friend of his for many years.

Q I mean, a close intimate friend? A Well, socially we didn't associate. I mean, I had my people that I associated with, and he did. As far as within the union, oh, yes, an intimate friend within the union.

Q Weren't you close intimate friends before either of you were married? A Oh, yes, we were close intimate friends.

Q And went together all the time? A No.

Q And you have kept up a close intimacy during all the years that intervened, haven't you? A Well, friends, not close intimacy. When I got married, I had my own friends I associated with, and he had his.

Q You were employed at Allis-Chalmers? A Yes, sir.

Q During that period? A Yes, sir.

269 Q And you were a member of Local Union 248, were you not? A Yes, sir.

Q And an officer? A Yes, sir.

Q And you were also a delegate to the union council, CIO, for many years, weren't you, from Local 248 to the union council? A Yes, sir.

Q You were the delegate from 248? A Yes.

Q And during all that time that you were an officer, you were recording secretary and the defendant Christoffel was president, wasn't he? A All the time I was recording secretary?

Q Yes. A I also was after he was no longer president. I was still secretary.

Q During all the period he was president, you were recording secretary? A Yes, sir.



Q And were closely associated with him in the affairs of the union, weren't you? A Yes, sir.

270 Q And outside the union? A No, sir.

Q Now, as the recording secretary of the union, you had some measure of control of the union headquarters, didn't you? A Just as it pertained to the minutes, and stuff like that.

Q Well, weren't there at the union headquarters a library and papers for the convenience of the members of the union?

MR. ROGGE: What is the purpose of this?

THE WITNESS: Yes, sir.

MR. ROGGE: What is the purpose of this? Judge, I object. It is not proper, whether it is cross examination or redirect examination. It is not proper.

THE COURT: I will allow the question. He answered "Yes."

BY MR. PRATT:

Q Yes? A Yes. Q And many other papers there? Weren't there copies of the Daily Worker kept at that headquarters, in the office there?

MR. ROGGE: I object.

THE COURT: Overruled.

THE WITNESS: Was there copies there?

271 BY MR. PRATT:

Q Yes. A Sure, off and on, there was a copy of it laying around.

Q Wasn't there a file of the Daily Worker kept there all the time for the use of the members?

MR. ROGGE: I object to the question. If it is cross examination, it has nothing to do with what I examined the witness upon, and it is not proper redirect examination.

THE COURT: I will sustain the objection.

BY MR. PRATT:

Q Now, you have testified naming the various members of this Committee. Were you familiar with the



names of all of them? A Well, I am familiar with the names of quite a few because I went to see them personally. I visited them.

Q When was that? A We were here for some time. First I came here with the idea of getting various Congressmen's assistance.

Q Well, now,—

MR. ROGGE (interposing): Let him finish.

MR. PRATT: I did.

Did you finish the answer?

THE WITNESS: Yes, sir.

BY MR. PRATT:

272 Q Well, this Committee before which you and Mr. Christoffel appeared on March 1, 1947, had only been in existence a couple of months, hadn't it? A This particular Committee?

Q Yes, sir. A Well, the Committee had but the Congressmen were here before them.

Q Were you interested in calling on all the members of Congress? A If I could, I would have

Q Well, you did call on all the members of this Committee? A No, sir.

Q Which ones did you call on? A I called on Mr. Kennedy, on Mr. — who had I spoken to prior to this, or what?

Q The ones that you called on, as you have already testified? A Well, I talked to Mr. Owens, Mr. Schwabe, and Mr. Kennedy, and I talked to Mr. Klein, and Mr. Lucas; and Mr. — I talked to Mr. Fisher, and I talked to—

Q (Interposing) Now, you said that—

MR. ROGGE (interposing) Let him finish.

BY MR. PRATT:

273 Q Have you finished? A I don't remember some. I remember talking to some of those who I don't recollect their names.

Q Now, you said that on that Saturday afternoon, March 1st, after Christoffel was sworn, he made his prepared statement; is that right? A Yes, sir.

Q And you had some discussion about it, to which Mr. Rogge directed your attention, at a time when Mr. Lesinski, Congressman Lesinski, wasn't there, because you wanted to see him about something? A I talked to Mr. Lesinski prior to that. I talked to him when Mr. Thomas was testifying, and we passed him some notes then, and we passed some notes to various other ones up there, and when Mr. Base was testifying.

Q Now, the occasion that you spoke of when you had a note to pass to Congressman Lesinski and found he wasn't there, when was that? A That was at the time when we were discussing the arbitration question.

Q Was that when Christoffel was making his prepared statement? A No, sir, that is when Mr. Hoffman was asking questions dealing with the subject.

Q Was that at the start of Congressman Hoffman's interrogation? A I would not say it was in the first few questions he asked; no, sir.

Q Anyway, you found that Congressman Lesinski had left his seat momentarily; is that it? A Well, he wasn't there when I was looking for him.

Q That is right, but he came back, didn't he? A No, sir, because I would still have given the note.

Q You say he didn't come back from that time on? A Yes, sir.

Q He wasn't there? A Yes, sir.

Q Now, you are sure of that, are you? A To the best of my recollection, he wasn't there.

Q Congressman Lesinski left before Christoffel started and before he testified, specifically, to these questions of communist connections, and that at the time he so testified you say that Congressman Lesinski wasn't there? A Well, I was looking for him that day, on that afternoon, and I will say—

Q (Interposing) You say he wasn't there at that time? A Yes, sir.

Q Is that right? A Yes, sir.

Q And he didn't come back any more? Did you  
275 say that? A That day?

Q Yes. A Well, he wasn't there when they  
closed up.

Q Was he there at any time after you looked for him  
and found he wasn't there? Did he come back? A I  
kept watch for that fellow, and he wasn't there.

Q He wasn't there any more? A Not there.

Q You are sure of that? A I am fairly sure of that.

Q Fairly sure? A Yes.

Q You are positive, are you, that Congressman Le-  
sinski didn't come back and wasn't there when these ques-  
tions relating to communism were asked of Christoffel?

MR. ROGGE: He has answered that. He said he was  
fairly sure, and that is surer than Congressman Hartley  
was.

THE COURT: I will allow the question.

THE WITNESS: I am fairly sure he wasn't there be-  
cause I was looking for him.

BY MR. PRATT:

Q Was Congressman McConnell there that afternoon?

A I don't know the gentleman. I can't place him.

Q You don't know whether he was there or not;  
276 is that right? A I can't place him.

Q Was Congressman MacKinnon there that aft-  
ernoon? A I don't know him, either.

Q Was Congressman Kelley there? A I don't know.

Q You don't know whether he was there or not; is  
that right? A No, sir.

Q And that is true of McConnell and it is true of Mac-  
Kinnon, that you don't know whether they were there or  
not; is that right? A Yes, sir. There was one or two  
there that I still don't know their names, but they were  
there.

Q Now, you say, I think you said in answer to a ques-  
tion by Mr. Rogge, that you kept count of the number of  
Congressman who were there as members of that Commit-

tee?—A Oh, I didn't keep—all through the whole session?

Q Yes. A Well, it just so happened when I went back to the seat, we started discussing the similarity between this and when you go to see the House—there are a lot of them always absent.

THE COURT: What about the House?

BY MR. PRATT:

277. Q What House? A The House of Representatives.

BY THE COURT:

Q Who did you say that to? A To some of my friends who were there.

Q Who? A I believe it was Mr. Laidwig and Mr. Buse.

Q You mentioned that this Committee was acting somewhat similar to the House of Representatives in that there weren't many people there? A We were discussing that particular subject; yes, sir.

Q And who brought that up? A Well, the point is, I went there several times to the House, and a lot of times all the Congressmen weren't there.

Q And who brought this up then, this discussion up then, in the middle of this Committee hearing, that you discussed the fact that the Committee acted somewhat similar to the House in that there weren't many people there? A The fact is, I was constantly interested in the situation, and I thought everybody else in the world should be interested in it.

Q No, I am talking about the number. How did you happen to talk about the number of members of the  
278 Committee present? A Well, of course, we had to contact some of those fellows and speak to them. It was our job, some assigned to us, and some others, and I had to see some.

Q Was that what brought up all the conversation about the number that was there? A Yes, sir, because we had still to go see some of them we hadn't seen at that time.



Q And you actually counted them? A Yes, sir.

\* Q Why did you count them? A Well, I was there and, well, I counted them because we wanted to count noses, who was there, who we talked to, and who we didn't talk to.

Q You knew who you talked to without counting noses?

A I knew who I talked to or those I didn't.

Q And they knew who they talked to without counting the number there, didn't they? A I don't necessarily think so. You see, we had a number of them we had to talk to, and we expected to speak to in regard to this strike situation, and we wanted to convey our situation to them.

Q Yes, I understand that, but my question is: Why did that necessitate you counting the number that was there?

A Anyway, it was common talk.

Q I am not asking you about common talk.

279 What necessitated you counting the number that was there? A Well, the sad thought of it was that these fellows wasn't interested in us in this situation, and I wanted to know how many was interested in it and if we could not convey our message to those that weren't there that had missed our presentation.

Q You had seen some previously? A Yes, but not all.

Q How many had you seen? A I talked to Mr. Lucas for about two minutes, and he promised to have further discussion with me in his office, and when he left, I ran out in the hall after him, and he told me to come back and see him later.

Q Lucas? A Yes, sir.

Q What time did he leave? A Well, Lucas left—Mr. Thomas was talking of being questioned at the time Mr. Lucas left.

Q I thought you said Mr. Lucas wasn't at the afternoon session? A I don't recall that I said he wasn't there. I said I know I talked to him that day.

BY MR. PRATT:

Q Would you say Mr. Lucas was there at the after-



noon session during the time Thomas was testifying? A I am fairly sure of that.

Q Yes. Now, this hearing was conducted in the Caucus Room in the Old House Office Building, wasn't it?

A I don't remember the exact name of the room. I know it wasn't in the regular Labor Committee room. They have one room of their own, and this was a bigger room.

Q This was a room on the floor below in the House Office Building, the Old House Office Building, on the floor below where the Committee's offices were?

Well, never mind, I withdraw the question.

A I would not swear whether it was above or below.

Q It was a very large room? A A very large room.

Q A room perhaps four times as big as this courtroom?

A Oh, no, I don't think so.

Q Wasn't it? A No.

Q And there was a lot of space there for the public and spectators? A Yes, sir.

Q And were there many in attendance, many spectators?

MR. ROGGE: I object to this as immaterial, the spectators who were there.

THE COURT: I will sustain the objection.

BY MR. PRATT:

281 Q Now you have already testified in my cross examination to the fact that for years you and Mr. Christoffel were close intimate friends. That is right, isn't it? A We were friends; yes, sir.

Q And let us go way back in the early 1930's. At that time weren't you and he both members of the Young People's Socialist League? A Yes, sir.

MR. ROGGE: I object; not proper.

THE COURT: He has answered. Go ahead.

MR. ROGGE: Give me a chance to object, Mr. McStroul.

BY MR. PRATT:

Q Now, about that time, during your intimate associ-

ation in this Young People's Socialist League, didn't Mr. Christoffel then join the Communist Party? A That I don't know.

Q And didn't he, as a matter of fact, didn't he try to get you to join the Communist Party? A I don't know that.

Q Well, you say it is not a fact? He didn't attempt to or try to urge you to join the Communist Party? A I don't ever remember him doing that; no, sir.

Q Do you say it is not true? A Well, there are so many people asked me that, I don't remember who, and I don't remember him ever asking me.

282 Q A good many people asked you to become a communist? A Yes, sir.

Q And you don't recall that he asked you to become a communist? A No, sir, I don't recall that.

Q But it might have been so; is that right?

MR. ROGGE: Just a moment. He said he has no recollection of Mr. Christoffel ever asking him that. What might have happened, that is something else.

BY MR. PRATT:

Q Have you ever attended meetings of the Communist Party? A No, sir.

Q Never? A Well, I attended meetings when communists were there.

Q I mean, regular meetings of the Communist Party. A Oh, no.

Q Weren't you a subscriber to the Daily Worker? A No, sir.

MR. ROGGE: I object.

MR. PRATT: He has answered it.

That is all. I don't want to excuse the witness, Your Honor. I want to recall him at another time very probably.

THE COURT: Very well.

283 Do you want to ask any questions?

MR. ROGGE: Mr. Pratt asked him about cer-

tain names, and I don't remember them, and I just wanted to ask him to put a box for each of the names that he has testified about, and write out the names on this paper, Judge.

THE COURT: Very well. I will let you do that in the recess.

MR. ROGGE: May I ask the witness to do this and it will save time. I will give him a clean white sheet of paper, and he can draw a chart and put a box for each of the nine that was there, with the names where he remembers them, and he can do that during the noon recess.

THE COURT: Yes; with you and Mr. Pratt.

MR. ROGGE: All right; very good.

284 MR. ROGGE: May I have this marked as Defendant's Exhibit 2 for identification?

MR. PRATT: Is that 2?

MR. ROGGE: Yes.

(A chart was marked for identification as Defendant's Exhibit No. 2.)

MR. ROGGE: Where did the witness go?  
Thereupon—

*Fred L. McStroul*

resumed the stand and testified further as follows:

*Further Cross-Examination*

BY MR. ROGGE:

Q Mr. McStroul, during the noon recess you drew a chart showing where Mr. Christoffel sat, where you sat, and where the members of the Committee who were  
285 present sat; is that right? A Yes, sir, to the best of my recollection.

Q And this I have marked Defendant's Exhibit No. 2 for identification, is that right? A Yes, sir.

Q I notice that on a couple of positions that you put

a question mark. Why is that? A I don't remember the names.

Q Is that the reason for putting the question marks there? A Yes, sir.

MR. ROGGE: I shall offer it in evidence when it comes my turn, Judge. That is all.

*Redirect Examination.*

BY MR. PRATT:

Q You said, Mr. McStroul, you didn't know how many were there when this session commenced. A Yes, sir.

Q And at some time or other as represented by this paper you said there were eight there, is that right? A I said we counted—I counted nine.

Q You counted nine, but you have only got eight on this paper, haven't you? A Yes, sir.

Q You don't know where the other man was? A Yes, sir.

286 Q Where was he? A I don't remember.

Q You don't know where the other man was?

Now, how many times did you count the number of Committeemen present on this occasion? A Maybe two or three times.

Q How many were there when Mr. — who was the vice president of the union? A R. J. Thomas.

Q Mr. Thomas. How many were there when Mr. Thomas started testifying? A I don't remember the exact amount there were at that time.

Q How many were there when Buse started his testimony in the afternoon? A There was quite a few more than there was on that picture now.

Q Quite a good many men? A Yes, sir.

Q You do not know how many? A No, sir.

Q And how many were there when Christoffel started to testify? A I don't remember the exact amount when he started to testify, although I know there was a lot  
287 less than there was when Mr. Buse was. Mr. Buse was first and a whole bunch of them kept drifting away.



Q And coming again, didn't they? A Some came back, some didn't come back.

Q Some came in, some came back, and then there were some additional members who came in, weren't there, if you know? If you don't know, say so. A When Mr. Buse testified there was some additional ones I remember coming in. We was looking for them to find who all was on the Committee and contact them.

Q As a matter of fact, of the 25 members of that committee, you wouldn't be able to recognize them if they came here in the room, would you? A No, sir.

MR. PRATT: That is all.

THE WITNESS: Not all of them, some of them.

*Recross Examination*

BY MR. ROGGE:

Q How many would you be able to recognize if they came in here, Mr. McStroul? A Oh, at least ten of them, a minimum of ten.

Q You said there were more here when Mr. Buse testified. Do you know how many more than the eight you have listed here? Would it help you to look at the chart?

A There was at least four or so more.

288

*Redirect Examination*

BY MR. PRATT:

Q You say there were at least four more than you have drawn on this chart? A Mr. Buse, that was the beginning of the thing.

Q You say you could recognize at least ten of them if they came in this room now; is that right? A I think I could, yes, sir.

Mr. Lucas, Mr. Klein, Mr. Nixon, Mr. Schwabe, Mr. Hartley, Mr. Hoffman, Mr. Kennedy. I can't just think of all their names at the present time, but I think—

MR. PRATT: That is all.



MR. ROGGE: Let me show you a list of names and you tell us the ones you would recognize, Mr. Witness, if they came in.

THE WITNESS: I would recognize Mr. Lesinski, Mr. Kersten, Mr. Owens, additional to what I mentioned before.

MR. PRATT: In order to give the names as you just have; you have before you the list of all the members of the Committee, did you not? A Yes, sir.

MR. PRATT: That is all.

MR. ROGGE: I think the record showed that even before Mr. Pratt made his observation. That is all, if the Court please.

359 MR. PRATT: Call Congressman McCowen.  
360 Thereupon—

*Edward C. McCowen*

was called as a witness by the United States and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, sir? A Edward O. McCowen.

Q You are a Member of Congress, are you not? A Yes, sir.

Q From what district? A 6th Ohio District.

Q And you are a member, are you not, of the House Committee on Education and Labor? A Yes, sir.

Q Do you recall the occasion on the first day of March, 1947, when your Committee on Education and Labor had a hearing at which Harold Christoffer was a witness? A Yes, sir.

Q Do you recall that occasion? Were you there, then, Congressman? A Yes, sir.

Q Do you remember particularly the afternoon session on that day? A Yes, sir.

361 Q And do you recall whether you were there at the beginning of the afternoon session when first a man by the name of Buse testified? A Yes, sir.

Q Were you there at the start of the session? A I was.

Q And do you recall later in that session of the Committee that the defendant Christoffel appeared and was sworn?

MR. ROGGE: If the Court please, I object to the leading character of all these questions.

MR. PRATT: I want to direct his attention to the matter—

THE COURT: The witness has testified he was there at the beginning of the afternoon session on March 1. My ruling has been to the effect that if a quorum of that Committee was present at 2:15, that that was a legally constituted Committee of the House, capable of conducting its affairs, and the fact that a member went out and came back, or went out and didn't come back, so long as there is a legally constituted committee, that is sufficient in law. The Congressman has testified on the afternoon session of March 1, 1947, he was present.

I take it now, Mr. Pratt, you desire to question the witness how long he was in the session.

362 MR. PRATT: I want to ask him if he was there when the defendant was sworn and when he testified.

THE COURT: What is wrong with that, Mr. Rogge?

MR. ROGGE: I just had the feeling these questions were in the form of leading questions.

THE COURT: Well, I don't see how else he can ask them. Either the Congressman was there, or he wasn't there.

I will allow the question.

THE WITNESS: Will you state that question again, please?

MR. PRATT: Read the question, please.

(The question was read by the reporter.)

THE WITNESS: Yes.

BY MR. PRATT:

Q And you were there at that time? A Yes, sir.

Q And were you there during the period of his testimony? A Yes, sir.

MR. PRATT: That is all.

### *Cross-Examination*

BY MR. ROGGE:

Q The Committee on Education and Labor had a regular procedure which it was following on this Saturday, didn't it? A Yes, sir.

Q And according to that procedure, the Chairman, who was Congressman Hartley, sat in the center, 363 and then the Republican members in the order of seniority sat on his right and the Democratic members in the order of seniority sat on his left, is that right?

MR. PRATT: I object to the question on the ground that it is not within the range of the direct examination.

THE COURT: Sustained.

MR. ROGGE: If Your Honor—

THE COURT: Sustained.

BY MR. ROGGE:

Q The first witness that afternoon was Mr. Buse, wasn't it? A That is my recollection.

Q And after he testified for a period of time, then Mr. Thomas took the stand? A That is right.

Q And Mr. Thomas first made a statement, and then he was questioned, is that correct? A That is right.

Q And Mr. Thomas immediately preceded Mr. Christoffel as a witness, didn't he? A I don't know that I remember all of the details of the order, but I was there.

Q. Mr. Christoffel came on rather late in the afternoon, didn't he, Congressman McCowen? A. That is right.

364 Q. Would it refresh your recollection to look at the printed hearings to be able to tell me whether it is not a fact that Mr. Thomas immediately preceded Mr. Christoffel?

MR. PATTON: If the Court please, I see no point to that. It is admitted Mr. Thomas did precede Mr. Christoffel. The record so shows.

MR. ROGGE: This is a new witness, and I am entitled to ask this on cross-examination.

THE COURT: Very well.

THE WITNESS: Yes, sir.

BY MR. ROGGE:

Q. Now, after Mr. Thomas made his statement, the Chairman called upon the various members of the Committee to question him, didn't he?

MR. PRATT: To that I object, if the Court please, on the ground it is not in the range of the direct examination and not relevant.

THE COURT: Well, the witness has testified he was there at the beginning of the session, and that he remained there through the testimony of the defendant.

This Court has ruled that if a quorum was present at the beginning of the afternoon session, that it was a legally constituted Committee of the House, competent to transact business.

The defendant is now attempting to prove that  
365 the witness was not present and therefore he is asking questions of the Congressman as to other members of the Committee who were called upon to make a statement.

I will allow the question.

BY MR. ROGGE:

Q. And the first one he called upon was Congressman Hoffman, is that correct?

THE COURT: If he remembers.

MR. ROGGE: Well, now, he has stated he was there, Judge.

THE COURT: I understand that. It is one thing for a witness to remember where he was on a certain date, but he said he doesn't remember all the details.

THE WITNESS: That is right. I know that Mr. Hoffman questioned him at length.

BY MR. ROGGE:

Q. I am asking you wasn't Mr. Hoffman the first one the Chairman called upon?

MR. PRATT: If the Court please, I object to this. It is perfectly obvious—

THE COURT: Sustained. I will sustain the objection.

BY MR. ROGGE:

Q. And Mr. Hoffman questioned him, and after Mr. Hoffman had finished his questioning, the Chairman then called upon you, is that correct?

MR. PRATT: I object, if the Court please.

366 MR. ROGGE: You state you had no questions.

MR. PRATT: I object to this question.

THE COURT: If he remembers, I will allow him to answer.

THE WITNESS: My answer as stated right here, "No, questions," is correct.

BY MR. ROGGE:

Q. Let me also ask you this, The Chairman called upon you after Mr. Hoffman said he had finished with his questions, is that correct? A. That was the usual procedure.

Q. That is what was followed in this instance, he called upon you next; right? A. He called on me, and I answered him.

Q. You said "No questions." A. Right; at that time.

Q. At that time: And then he called upon Congressman Brehm? A. That is right.

Q. And Congressman Brehm, when he said he was through with his questions, the Chairman then called upon Congressman Kersten; is that right?



MR. PRATT: I object, if the Court please. I don't think this is relevant or at all within the range of the direct examination, and I think it is entirely immaterial.

MR. ROGGE: This is within the realm of cross-examination.

367 MR. PRATT: It is perfectly obvious the questions that are being asked are simply following the transcript as it appeared in the printed form, and it is certainly perfectly obvious that the witness McCowen does not have a recollection.

THE COURT: I will sustain the objection.

MR. ROGGE: Well, I have a line of questions, Judge, I think I am entitled to ask, and I would like to go through with the rest of them.

BY MR. ROGGE:

Q And I will ask you whether after calling upon Kersten and after Congressman Kersten had questioned the witness and had stated "That is all," that the Chairman next called upon Congressman Owens.

MR. PRATT: The same objection for the same reason.

THE COURT: I think I will allow these questions, because it goes to the factual situation of what happened on that afternoon.

I don't want to repeat what I have already ruled on.

The witness has testified that he was there during the whole session, and so in view of that fact I think he is entitled to examine him on that point.

I will allow those questions, Mr. Rogge.

MR. ROGGE: Thank you, Your Honor.

BY MR. ROGGE:

368 Q Let us go back. After Congressman Brehm had said, "That is all," the Chairman next called upon Congressman Kersten, is that right? A I simply couldn't attempt to remember he called on just this one or that one and that one. I know that he called on them at that time.

Q Let us get at it this way. You know the Chairman called upon the members of Congress who were present in the order of seniority, first those on the Republican side and then those on the Democratic side? A That was his usual custom.

Q And members either questioned, or stated that they had no questions; right? A Sometimes they said they passed or some other expression.

Q That is right, there were occasions when a Congressman said "I pass," or "I reserve my time until later," but they indicated in some way that they had questions at that time and asked them and then indicated they were through, either by saying "That is all," or thanking the witness, or they stated that they passed or they had no questions? A They may just have nodded their head.

Q You know of occasions in this printed record where they stated many times they had no questions, don't you, Mr. Congressman? A That happens.

369 Q That happened, as many as four times in a row sometimes? A I wouldn't say how many times it happened. I wasn't observing that particularly.

Q May I call your attention, to refresh your recollection, to page 1893 of the record, and I think on one of these occasions you passed.

MR. PRATT: I object to those questions. This goes to the morning session.

THE COURT: I will sustain the objection. It is not what the practice was, but what happened on this particular occasion.

BY MR. ROGGE:

Q After Congressman Brehm said, "That is all," we get to Congressman Kersten, is that right?

MR. PRATT: What page are you referring to?

MR. ROGGE: 2065.

THE WITNESS: That is the record.

BY MR. ROGGE:

Q And after Congressman Kersten said "That is all," and you may leaf through that yourself, Congressman. A Yes, sir.

Q And after Congressman Kersten said "That is all," the Chairman next called upon Congressman Owens, right? A That is the record.

370 Q You may go on to the next one, Congressman. I don't mean to rush you in going through those pages.

Next, the Chairman called upon Congressman Kearns, who stated he had no questions, right?

MR. PRATT: Now, if the Court please, this does not relate to the testimony of this defendant at all.

THE COURT: Isn't this in the afternoon?

MR. ROGGE: Right, Judge. We are still on Thomas.

MR. PRATT: I object to it for the additional reason, as I said before, that it is not within the range of direct examination and I don't think it is proper cross-examination of the witness.

THE COURT: Objection overruled.

MR. PRATT: I think it is irrelevant and immaterial.

THE COURT: How is it immaterial and irrelevant in view of the fact that you have asked him if he was there during the entire session? Certainly the defense has a right to show, if they can, that he wasn't.

MR. PRATT: It is quite apparent that that is not the purpose of the cross-examination at all, that Congressman McCowen was there.

THE COURT: What is it?

MR. PRATT: I don't know what it is, but it certainly doesn't appear in the slightest degree relevant.

THE COURT: If that is not the purpose, I will  
371 sustain the objection.

MR. ROGGE: If the Court please, the Government is now bringing various Congressmen to testify who was there in the afternoon. Does Your Honor mean to rule with reference to these men I can't establish through them on cross-examination who was there?

THE COURT: That they weren't there?

MR. ROGGE: Either that they or others weren't there.

THE COURT: I mean Congressmen weren't there?

MR. ROGGE: That Congressmen weren't there, right.

THE COURT: That is what I allowed the cross-examination for.

MR. PRATT: For the purpose of determining whether Congressman McCowen was there, if that is the purpose I wouldn't object, but he is talking about a lot of other Congressmen, whether they were there.

THE COURT: Do you want to make this witness your own witness?

I will allow any cross-examination you desire to make of Congressman McCowen that you think might show he was not there, because that is the only purpose for which the Government put Congressman McCowen on.

No questions were asked by the Government of Congressman McCowen as to who else on the Committee was present, so, of course if you desire to do that, Mr.  
372 Rogge, you will have to make the Congressman your witness.

MR. ROGGE: I have only this observation, Judge, and then I will take up Your Honor's suggestion.

I think on cross-examination, to test the recollection of this witness, I should be allowed to test the recollection of this witness about whether he remembers who else was there. Suppose you had this, you had someone testifying to a conversation on cross-examination? I would be able to ask him perfectly properly who else was there. That is what I am doing here. I want to find out from this gentleman, who says he was there, and I say to him, "Who else was there?"

Now, that is perfectly proper on cross-examination to test this man's recollection.

THE COURT: Very well.

BY MR. ROGGE:

Q Now, my last question was that after Congressman Owens, the Chairman called upon Congressman Kearns, and Congressman Kearns stated that he had no questions, right? A That is right.

Q And thereupon the Chairman called upon Mr. Nixon, right? A Yes, sir.

Q Now, Mr. Nixon was the last one on the Republican side, is that correct? A Yes, sir.

373 Q I mean in point of seniority he was at the foot end of the Republican side, isn't that right, Congressman? A I think he was.

Q Do you wish to see a list of the Committee? A Yes, sir.

That is correct.

Q And after Congressman Nixon, who was the next one that the Chairman called upon? A Mr. Lesinski.

Q And after Congressman Lesinski, who was the next one that the Chairman called upon?

THE COURT: You are depending upon that record, rather than your independent recollection, Congressman?

THE WITNESS: Yes, sir.

BY MR. ROGGE:

Q You were there this afternoon, Congressman, weren't you? A Yes, sir.

Q Who was the next one that the Chairman called upon after Congressman Lesinski? A Mr. Fisher.

Q And after Mr. Fisher who was the next one? A Mr. Kennedy.

Q Now, on the first go-around, did he call upon  
374 anybody else?

MR. PRATT: Now, I object to that.

THE COURT: Sustained.

MR. PRATT: Unless the Congressman has some independent recollection.

THE COURT: I will sustain the objection.

MR. ROGGE: I will phrase my question this way.

BY MR. ROGGE:



Q Congressman McCowen, in the examination of the witness Thomas did the Chairman call upon any others than the following Congressmen:

Congressman Hoffman; Congressman McCowen; Congressman Brehm; Congressman Kersten; Congressman Owens; Congressman Kearns; Congressman Nixon; Congressman Lesinski; Congressman Fisher and Congressman Kennedy, a total of ten?

MR. PRATT: I object to that, if the Court please.

THE COURT: Sustained.

BY MR. ROGGE:

Q May I ask this question, Mr. McCowen?

Did the Chairman call upon any others than the ones concerning whom I have already asked you?

MR. PRATT: To that I object.

THE COURT: Sustained.

BY MR. ROGGE:

Q Congressman McCowen, you don't recall on this Saturday afternoon specifically who was present at the  
375 time of the examination of the witness Thomas, do you? A I haven't said that.

Q Well, are you?

MR. PRATT: I object to that.

THE COURT: Sustained.

MR. ROGGE: If the Court please, I am going in—

THE COURT: I have made my ruling, Mr. Rogge. I don't want to repeat this again, but I have said it twice, that where the quorum was present at 2:15 it constituted a legal Committee of the House of Representatives, and it was a legally constituted Committee prior to the time this defendant was sworn and examined, and no suggestion was made of a lack of a quorum during the business of this Committee; this Court is holding it a legally constituted Committee of the House, and the fact that members came in and out, some went out and returned, some went out and didn't return, as far as this court is concerned is immaterial.

Therefore, the number of Congressmen that were present during the examination of Thomas is immaterial, and I sustain the objection and you may have an exception.

MR. ROGGE: Will Your Honor indulge me just a moment?

THE COURT: Yes, indeed.

(Thereupon, a short recess was taken.)

MR. ROGGE: May I proceed? If the Court please, did I understand Your Honor to rule it isn't material  
376 how many Congressmen were there at the time Mr. Christoffel testified, Your Honor?

THE COURT: That is correct, sir. That is correct. Just so long as there were a quorum present when the Committee met to transact business. And if the Committee did meet, that is, if 13 of this Committee of 25 did meet and at some time thereafter during the progress of the hearing some of these 13 or 14 left temporarily, or otherwise, and no question had been raised as to the lack of a quorum, then that fact, the majority did not remain, would not affect for the purpose of this case the Committee as a competent tribunal, just so long as the Committee went in session as a legally constituted Committee of the House, and that before the witness was sworn and testified, there was a legal, competent Committee of the House, then I will sustain the Government on the question of a quorum.

MR. ROGGE: I would like to be heard on that.

THE COURT: I heard you for an hour the other day, Mr. Rogge, when you objected to the introduction of the transcript.

I have made my ruling. You may have an exception.

MR. ROGGE: I still think this witness having testified he was there in the afternoon—

THE COURT: I think so too.

MR. ROGGE: I can test his recollection.

THE COURT: As to his presence during the  
377 entire afternoon.

MR. ROGGE: And who else was present, if the Court please.

THE COURT: If he remembers who was there, but it is immaterial.

BY MR. ROGGE:

Q Can you state, Mr. McCowen, who was present among the Congressmen at the time of the questioning of Mr. Thomas? A I don't care to make any definite statement as to that. I know I was there.

Q Now, the questioning of Mr. Christoffel took place sometime between four and five in the afternoon, didn't it?

A I wouldn't remember the hour.

Q But it was late in the afternoon, and after Mr. Christoffel made his statement was he questioned? A Yes, sir.

Q Congressman Hoffman questioned him first, is that right? A That is right.

MR. PRATT: I object to that.

MR. ROGGE: If the Court please, this is getting right down to the transaction. I am testing this man's recollection.

MR. PRATT: I don't think it is within the range of direct examination at all.

MR. ROGGE: It certainly is. This man said he was there.

MR. PRATT: It is not material under the Court's ruling.

378 THE COURT: The witness testified Congressman Hoffman questioned him.

Go ahead.

BY MR. ROGGE:

Q Now, who questioned Mr. Christoffel after Congressman Hoffman?

MR. PRATT: I object.

THE COURT: We have been all over this, haven't we?

MR. ROGGE: No questions on Christoffel. The other was on Thomas, if the Court please. This is still Saturday afternoon.

THE COURT: All right. If you remember, Congressman, and recall, you may answer.

THE WITNESS: I wouldn't care to attempt to recollect the exact order of who questioned Mr. Christoffel.

BY MR. ROGGE:

Q Suppose you just tell us without referring to the order who questioned Mr. Christoffel. Would you like to see the order of seniority of the Congressman? Would that help you any? A Yes.

Q What other members of the Committee questioned Mr. Christoffel on this Saturday afternoon?

MR. PRATT: To that I object, if the Court please.

THE COURT: If he recalls.

379 THE WITNESS: Mr. Hoffman, Mr. Kersten and others. I don't care to try to attempt to say just who of them questioned him.

BY MR. ROGGE:

Q How many questioned Mr. Christoffel? A I didn't understand you.

Q What? A I didn't understand you.

Q How many Congressmen questioned Mr. Christoffel this Saturday afternoon? A I don't know that I would want to make a definite statement on that.

Q Well, now, you have said Congressman Hoffman, Congressman Kersten. Who else? A The record will show.

Q Have you any recollection of it? A I heard the questioning.

Q Well, what did Congressman Kersten question Mr. Christoffel about?

MR. PRATT: I object to that, if the Court please. I think it is a way beyond the propriety—

THE COURT: I will allow the answer, if he remembers.

THE WITNESS: Would you repeat your question?

BY MR. ROGGE:

380 Q What did Congressman Kersten question Mr. Christoffel about? A I don't care to answer that in any detail.



Q What was the general subject? A He did question him.

Q What? A He did question him.

Q What about? A I don't want to answer that question.

THE COURT: Congressman, you mean you don't recall?

THE WITNESS: I wouldn't be able to give the details of it.

THE COURT: Very well.

BY MR. ROGGE:

Q Who else questioned Mr. Christoffel?

MR. PRATT: I object to that. The Congressman has already answered the question that he couldn't tell without referring to the record.

MR. ROGGE: This is cross-examination. I am entitled to probe this man's recollection, if Your Honor please.

THE COURT: I will allow the question. He may answer if he remembers.

THE WITNESS: Very well. Hand me the record; and I can verify that.

BY MR. ROGGE:

Q I am asking you for your recollection, Congressman. A I don't think I recollect the details with sufficient exactness to attempt to say just exactly what all was asked:

Q What was the last of that answer? I didn't get it.

THE COURT: He said he couldn't recall all the facts.

BY MR. ROGGE:

Q Do you recall anybody else, aside from Congressman Hoffman and Congressman Kersten, who questioned Mr. Christoffel on Saturday afternoon, March 1? A There were a number of them who did question him.

Q Well, about how many? A I do not recollect the number that did.

Q Four, five, six?



MR. PRATT: I object, if the Court please. He said he couldn't remember.

THE COURT: Objection overruled.

THE WITNESS: Several did. I don't know how many.

BY MR. ROGGE:

Q Congressman, I don't want to press you too far, but you say several. Can you tell me whether that is three, four, five, six; seven or more? A Several means any number more than two, doesn't it?

Q Yes. Well, I am asking you how many, sir. A And I said I didn't remember just how many.

Q Was it more or less than five?

MR. PRATT: If the Court please—

382 THE COURT: I sustain the objection.

MR. PRATT: You sustain the objection?

BY MR. ROGGE:

Q Congressman, on this Saturday afternoon, the Chairman called upon some who stated that they had no questions; right? A Yes, sir.

Q Were there any who stated they passed or nodded their head? A I do not recollect.

Q You discussed this case with Mr. Pratt, didn't you? A What do you mean by discussing the case with Mr. Pratt?

Q Well, he called your attention to this printed volume of the hearings, didn't he? You had a conversation with him before you took the stand?

MR. PRATT: When do you mean?

MR. ROGGE: I will let the witness fix that.

THE WITNESS: Why—

BY MR. ROGGE:

Q You recall whether you had a conversation? A You mean today?

Q Within the last month. A I talked to Mr. Pratt some time back—rather, he talked to me.

Q When was that? A I don't recollect.

383 Q You mean you can't fix that as being within the last month, or within the last two months, or within the last week? A The only question that was discussed at that time was—

Q I am asking you when, Congressman, this conversation took place. A I don't know exactly, but within the last three months; I will say.

Q And he had this printed volume with him when he discussed this case with you, didn't he? A I do not recollect.

Q You don't recall whether Mr. Pratt had Volume 4 of this printed record with him when he talked with you about this case?

THE COURT: That is what he said.

MR. ROGGE: I am just testing the witness's recollection, Judge. I want to be sure.

THE WITNESS: I said I do not recollect that.

BY MR. ROGGE:

Q As a matter of fact, he called your attention to specific pages, in here, didn't he? A I do not recollect.

384 Q Now, if you don't recall or recollect whether you had the conversation with Mr. Pratt about this volume in the last three months, how do you recall you were there on March 1, 1947?

MR. PRATT: I object to that.

THE COURT: Sustained.

BY MR. ROGGE:

Q Mr. Congressman, isn't it a fact that without a reference to this volume you have not the slightest independent recollection whether you were at this hearing on March 1, 1947? Isn't that correct? A It isn't. I know I was there.

Q I repeat my question: How can you be so sure of that and then not recall what took place within three months in your conversation with Mr. Pratt?

THE COURT: Sustained.

MR. PRATT: I object.

MR. PATTON: It is purely argumentative, Your Honor.

THE COURT: I sustained the objection.

MR. ROGGE: If Your Honor please, are there any other Congressmen in the court room who are being called as witnesses? If so, they should have been excluded.

THE COURT: I do not know of any.

THE DEPUTY MARSHAL: Are there any Congressmen in the Court room at this time?

(No response.)

385 MR. PRATT: I don't think there are, if the Court please. There are some in the witness room.

THE COURT: Is that all of this witness, Mr. Rogge?

MR. ROGGE: That is all, Judge.

MR. PRATT: That is all.

THE COURT: Thank you, Mr. Congressman.

(The witness was excused.)

MR. PATTON: Call Congressman Schwabe.  
Thereupon

*Max Schwabe*

was called as a witness on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PATTON:

Q Mr. Schwabe, will you identify yourself for the record, please? A My name is Max Schwabe, Representative in Congress from the Southern District of Missouri.

Q Are you a member of the House Committee on Education and Labor, Congressman Schwabe? A Yes.

Q State if you were present at the hearings before the Committee on Education and Labor on the afternoon of the 1st day of March of this year, at the beginning of the afternoon session when the defendant in this case, Harold

386 Christoffel, testified.

THE COURT: You mean 1947.

MR. PATTON: 1947.

THE WITNESS: I don't remember that it was the 1st of March, but I remember that I was present at the time he was sworn, and that it was a Saturday afternoon about a year ago.

BY MR. PATTON:

Q And were you present at the beginning of that session? A Yes, I was. I was there all day.

MR. PATTON: Take the witness.

*Cross Examination*

BY MR. ROGGE:

Q Congressman Schwabe, you state you were there all day? A Yes, sir.

Q And who was the first witness in the afternoon? A I didn't say, sir, that I remembered what took place all day. I remember being there all day, because I was interested, and I remember that after we had held hearings on the Taft-Hartley bill for a month or so, I said to Mr. Hartley one day I had been extra faithful, I was a very regular attendant. I remember specifically being there throughout the day on this particular day, and even at night. It was a Saturday night, and we had an executive session that night, and I was there at that time, too.

387 Q You stated you remember this Saturday very well. I am asking who the first witness was in the afternoon? A Well, I don't remember exactly what happened all day, but as I recall we had a Mr. Buse, Robert Buse, and it seemed like we had Mr. R. J. Thomas, and we had Mr. Christoffel, and we had Louis Budenz later in the evening. Just the order of how they came, I don't recollect all the details.

Q And were you there during the examination of all these people? A I would say I was there throughout the day.

Q. Who questioned Mr. Thomas?

MR. PRATT: I object to this.

THE WITNESS: Who questioned?

MR. ROGGE: He said he was there all day, if Your Honor please.

MR. PRATT: I object to this question because it is not within the range of the direct, and it is immaterial and irrelevant under the Court's ruling.

THE COURT: If you remember, Congressman.

THE WITNESS: Would you repeat the question?

THE COURT: He wants to know who questioned Mr. Thomas, if you remember.

THE WITNESS: Who questioned Mr. Thomas? I don't remember specifically who questioned him. I remember there was considerable interest by most of the 388 members of the Committee. I remember those who did attempt to ask questions had a hard time questioning Mr. Thomas, because Mr. Thomas seemed to want to do all the talking. It was hard to stop him once he started, once he got started talking.

BY MR. ROGGE:

Q You mean Mr. Thomas could out-talk all the members of this Committee? A What I am saying is when a member would ask the question, instead of Thomas making a simple answer he would run on for five or ten minutes. He was hard to stop.

Q Who questioned Mr. Christoffel?

MR. PRATT: I object to that.

THE COURT: Objection overruled, if he remembers.

THE WITNESS: I don't remember each and every one. As I recall, I didn't say very much, because other members seemed to be carrying on adequately and seemed to know more about the case. I can remember Mr. Kennedy being considerably interested, and I think he questioned him. I remember Mr. Kersten questioned him somewhat in detail. I remember Mr. Hoffman questioned him more or less in detail.



It is customary in our hearings where we have a 25-man Committee that not all of us question in detail, but various members who know more about various cases carry the ball on those particular occasions.

389 BY MR. ROGGE:

Q This Committee was arranged, the Republicans in the order of seniority to the Chairman's right, and the Democratic members in the order of seniority to the Chairman's left; is that right? A That is always the case.

Q And he called upon all those present in the order of seniority with each individual witness? A That is the custom.

Q Now, what did these different Congressmen question—you mentioned Mr. Kennedy questioned Mr. Christoffel. What did he question Mr. Christoffel about? A Would you repeat that question please?

Q If I am not mistaken, I understood you to say Mr. Kennedy was one of those who questioned Mr. Christoffel. A I couldn't say specifically. I remember he was quite interested in the case, and whether or not he questioned Mr. Buse at length or Mr. Christoffel—I think so. I couldn't swear positively as to what questions Mr. Kennedy asked.

Q And Mr. Kersten questioned Mr. Christoffel about what? A I don't remember specifically.

Q How many Congressmen all told questioned Mr. Christoffel on that Saturday that we are talking about? A I couldn't say.

MR. PRATT: Your Honor, I object.

390 THE COURT: Objection overruled.

BY MR. ROGGE:

Q I am just trying to get your best recollection. A I am trying to give you the best I have, too.

Q Was it more or less than five A I don't remember exactly how many, but I should say it was at least that many; but I don't know for sure.

Q You say another witness who was questioned on this Saturday afternoon was Mr. Budenz.

THE COURT: In the night, he said.

**THE WITNESS:** In an executive session at night, as I recall, we had Mr. Budenz. You see, we met each day for two or three months, holding hearings on the Taft-Hartley bill. We would hold hearings all day long, and we had one hundred and sixty-some witnesses and over two million words of testimony, and I couldn't testify to exactly who asked various questions of various witnesses on all those days.

**MR. ROGGE:** Will Your Honor indulge me a moment?

391 **Q** You are sure five men questioned Mr. Christoffel this Saturday? **A** I won't say as to five; I don't remember exactly.

**Q** What is your best memory? **A** I remember some members of the Committee were anxious to put Mr. Christoffel on the stand, as I recall, during the morning, and Mr. Thomas took more time than the Committee desired.

**Q** I don't mean to cut you short, but I would like to get your best recollection to the specific question how many people questioned Mr. Christoffel on this Saturday afternoon? **A** I remember that on that Saturday afternoon we had to call him back for the following Monday because the questioning was insufficient, and I remember the question coming up as to Mr. Christoffel not having sufficient funds to pay hotel bills, and he wanted to know whether the Committee—

**Q** (Interposing) I have asked a specific question. I am asking for your best recollection of how many Congressmen questioned Mr. Christoffel on this Saturday afternoon that we are talking about, and I think you can answer that.

**MR. PRATT:** He is giving it. I object to the interruption. He is making an explanation and it is proper.

**MR. ROGGE:** That is not so. I ask his remark be stricken.

392 **MR. PRATT:** I object to the interruption of the witness when he is making a statement that was entirely proper.

THE COURT: I will sustain the objection that the answer was not responsive to the question.

BY THE COURT:

Q Do you have an independent recollection of how many members questioned Mr. Christoffel? A Not exactly. I said I could not say. It was five, over or under. Perhaps it was less because I remember we didn't finish and that we had to call him back for the following Monday, and he didn't want to come back.

MR. ROGGE: That is all.

MR. PRATT: That is all.

(The witness left the stand.)

MR. PRATT: Call Congressman Brehm.

THE DEPUTY MARSHAL: He is not present.

MR. PRATT: Call Congressman Kersten.

Thereupon—

*Honorable Charles J. Kersten*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Your name is Charles J. Kersten, am I right? A Yes, sir.

393 Q Congressman, you are a member of the Congress from what district? A From the Fifth District of the State of Wisconsin.

Q And your home is in Milwaukee, is it not? A Yes, sir.

Q And are you a member, are you not, of the House Committee on Education and Labor? A I am.

Q And were you a member of that Committee on March 1, 1947? A I was.

Q Were you present at the beginning of the afternoon session of March 1, 1947? A I was.

MR. PRATT: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Now, the first witness of the afternoon session was Mr. Base; isn't that correct? A That is my recollection.

Q And he was followed by Mr. Thomas; is that right? A That is correct.

Q And Mr. Thomas made a rather lengthy statement, as a matter of fact, so long that Congressman Hoffman complained about it and then he was questioned; is that right?

A I don't recall the lengthiness of it, specifically.  
394 I remember he was questioned at some length. I don't recall the complaint.

Q Well, now, to refresh your recollection, I call your attention, first, to page 2058. A Pardon me, what is it you are calling my attention to?

THE COURT: Mr. Rogge, this witness has been asked one question.

MR. ROGGE: I am on the afternoon, Judge.

THE COURT: Whether he was present at the opening of the session, at the opening of the afternoon session. That was the question, wasn't it?

MR. ROGGE: I don't think so.

THE COURT: That was the last question.

MR. ROGGE: Will you read the question?

THE REPORTER (reading): "Were you present at the beginning of the afternoon session of March 1, 1947?"

"Answer: I was."

THE COURT: Now, haven't you conceded he was there all afternoon?

MR. ROGGE: I am not going to concede any members were there all afternoon because I think that is contrary to reason. I do say this: that this man has been asked whether he was there at the beginning of the afternoon session, and

I submit it is proper cross-examination of this witness to find out what he remembers about that afternoon session.  
395

THE COURT: But the transcript that you have referred to time and time again in questioning previous witnesses, referred to by you yourself, to Congressman Kerten at the time that this defendant testified; isn't that correct?

MR. ROGGE: He was there part of the time, but I am not going to concede to anybody, or to Your Honor, that any of these Congressmen were there continuously because I do not think that is so.

THE COURT: Maybe that is not so.

MR. ROGGE: But I submit to Your Honor I am entitled on cross examination to go into what happened on this Saturday afternoon. He has been placed there at the opening of the session.

THE COURT: Well, go ahead and ask him.

BY MR. ROGGE:

Q Now, Congressman, calling your attention to page 2058, and going to page 2062, isn't it a fact that Mr. Thomas, and you may examine this at greater length if you wish, sir— A (Interposing) I wish to examine it.

Q The question I am asking you; Isn't it a fact that Mr. Thomas' statement took over an hour?

MR. PRATT: I object to that, if the Court please.

THE COURT: I will let him answer.

396 THE WITNESS: From the answers and from the statement of Mr. Hoffman you have shown to me, it indicates he was there about an hour, or over an hour as Mr. Hoffman stated, but I don't have any independent recollection how long it was.

BY MR. ROGGE:

Q Do you have an independent recollection that you were there? A I do.

Q Do you have any independent recollection as to who else was there while Mr. Thomas was being questioned?

MR. PRATT: I object to that.

THE COURT: The objection is overruled.

THE WITNESS: As to who was there when Mr.



Thomas was being questioned, is that your question?

BY MR. ROGGE:

Q Right. A Well, I can recall certain members questioning him. I have a vivid recollection of certain members questioning Mr. Thomas. As to that, I have a very clear memory, and I have a clear memory also that there were a number of them there that I can specifically recall questioning him, as far as the actual type of questioning is concerned, and I recall Mr. Lensinski questioning Mr. Thomas. I recall Mr. Kennedy questioning Mr. Thomas, and I can recall others, but that is about the nature of my recollection in that regard.

397 Q Would it refresh your recollection, any to refer to these pages of the questioning of Mr. Thomas in the printed record? A Well, I think it would if I took the time for it; yes.

Q Now, by the way, on this particular Saturday was the procedure followed of the Chairman calling upon, first, the Republican side in the order of seniority and then upon the members of the Democratic side in the order of seniority?

MR. PRATT: In this case, it seems to me this is not relevant nor is it proper in view of the direct examination.

THE COURT: Objection overruled.

THE WITNESS: I don't recall specifically. My impression is that he did but—you mean as to Thomas?

BY MR. ROGGE:

Q As to this Saturday afternoon. A Well, I know that was the custom, and my impression is that the custom was followed. I don't have a vivid recollection of it.

Q And when the Congressman, the Chairman, would call upon these members in the order of seniority, they would either say, no questions, or they would question, or they would say, I want to pass, or things like that? A Well, I don't recall that; no. I don't recall.

Q Well, let us get at it this way. A Some may  
398 have and others may not have.

Q Isn't it a fact that the first one the Chairman called upon after Mr. Thomas had made his statement was Mr. Hoffman? A Is that what the record shows? That is my recollection. Do you want me to look at it?

Q Yes. I am showing you the record. You may examine it as much as you wish. A That appears to be the case?

Q Is that correct? A That appears to be the case from the record; yes.

Q Have you an independent recollection of that aside from the record? A Well, I refreshed my memory now; and I do recall Hoffman questioning him; yes.

Q And after Mr. Hoffman questioned him and indicated that he was through by saying, that is all, the chairman then called upon Mr. McCowen, Mr. McCowen said he had no questions; is that right?

MR. PRATT: I object to this. I don't see the relevancy of it.

THE COURT: I will sustain the objection.

BY MR. ROGGE:

Q By the way, do you know Fred McStroul? A I know the name, and I think I would know him, but  
399 I am not positive. I know the name. I think he is someone prominent in matters pertaining to the Allis-Chalmers union matters.

Q Was he there with Mr. Christoffel this Saturday afternoon?

MR. PRATT: I object to this, if the Court please.

THE COURT: I will let him answer, if he remembers.

THE WITNESS: I don't know; I don't recall.

BY MR. ROGGE:

Q Don't you recall an incident when Congressman Hoffman told Mr. McStroul to move away from Mr. Christoffel? Does that refresh your recollection on it? A Well, if the record would show that, that certainly would be the fact.

THE COURT: Does the record show that?

THE WITNESS: I don't recall.

MR. ROGGE: I am pretty sure it does, Judge. I am trying to get the witness' independent recollection if I can.

THE COURT: Well, he says he doesn't recall.

THE WITNESS: I don't recall; no.

400 BY MR. ROGGE:

Q Well, do you recall a man sitting beside Mr. Christoffel with a mustache? A I think that he did. It seems to me, yes. I am not positive but I have a kind of recollection of that.

Q Isn't it true, just like this? See if this doesn't refresh your recollection, that Mr. Hoffman told him to move away. A Mr. Hoffman? As a matter of fact,—

MR. PATTON (interposing): What page is that?

MR. ROGGE: 2093.

401 THE WITNESS: Well, the implication from the remark is that there was somebody sitting there prompting Christoffel or near him. Yes, that is true.

BY MR. ROGGE:

Q And wasn't that a person with a little mustache, who was Mr. McStroul? A I would not want to say. I don't recall. It may have been but I don't recall.

Q Do you recall the person with a mustache sitting beside Mr. Christoffel? A No, I would not say that I have any recollection of a person with a mustache sitting beside Christoffel. There may have been but I don't know definitely.

Q Do you recall anybody sitting beside Mr. Christoffel? A Now that you have called my attention to a particular statement of Mr. Hoffman's, definitely there was somebody there, and I do have a recollection that at some time, whether it was that day or may be the other day Christoffel testified, somebody might have been beside him. Whether it was Saturday afternoon, I don't remember.

Q Can you by referring to this volume tell us the ones upon whom the Chairman called to question Mr. Thomas?

MR. PRATT: I don't see that. I object.

THE COURT: Without referring to the record?

MR. ROGGE: No, no; by referring to the record.

402 THE COURT: I sustain the objection.

MR. ROGGE: That is all, Judge.

(The witness left the stand.)

MR. PRATT: Call Congressman Smith.

Thereupon—

*Honorable Wint Smith*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PATTON:

Q Your name is Wint Smith? A Yes, sir.

Q You are a member of Congress from the State of Kansas? A Yes, sir.

Q And a member of the Committee on Education and Labor? A Yes, sir.

Q Will you state, Congressman, if you were present at the beginning of the afternoon session of that committee on March 1, 1947? A I was.

MR. PATTON: Take the witness.

MR. ROGGE: If the Court please, under Your Honor's ruling, I have no questions.

403 THE COURT: Very well.

Thank you, Mr. Congressman.

(The witness left the stand.)

MR. PRATT: Call Congressman Fisher.

Thereupon—

*Honorable O. C. Fisher*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, sir? A Fisher, O. C. Fisher.

Q Congressman Fisher, you are a member of Congress from the State of Texas, I believe, are you not? A Yes, sir.

Q And are you a member of the House Committee on Education and Labor? A Yes, sir.

Q Were you a member of that Committee on the 1st of March, 1947? A I was.

Q And were you present at the opening of the  
404 afternoon session of that Committee on March 1, 1947? A Yes, sir.

MR. PRATT: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Mr. Fisher, how do you know that for that particular date? A I refreshed my memory this morning by looking up the date when Mr. Christoffel was called before the Committee, and it was on March 1st.

Q Did you discuss that with Mr. Pratt? A Mr. Pratt called me on the telephone two or three weeks ago and asked me if I was present when Mr. Christoffel testified, and I told him I was.

Q And you remember this was Saturday afternoon? A Yes, sir.

Q It was rather late, wasn't it? A The exact hour, I don't recall. I would say it was some time in the latter part of the afternoon.



Q Do you know whether Mr. Christoffel was questioned on Monday? A Yes, he was questioned on Monday also.

Q Did you refresh your recollection as to that, too? A I recall that.

Q Now, who were the witnesses who were called that particular afternoon? A You mean, Saturday afternoon?  
405

Q That is right. A I would not undertake to name all of them, but I recall Mr. Thomas testified, I believe, immediately before Mr. Christoffel. I think Mr. Buse was there that day also.

Q Now, is this statement based upon your independent recollection or has that been refreshed by looking at the record? A My memory in that regard is based upon my independent recollection.

Q Now, will you tell us, Congressman, who was present when Mr. Thomas was questioned? A You mean, all of them?

Q Yes. A I would not undertake to name every one of them. I can speak for myself. I was there.

Q You were in and out that afternoon, weren't you? A I beg your pardon?

Q You were in and out of the Committee room that afternoon? You were not there continuously? A I was there continuously.

Q Without interruption? A That is correct.

Q That goes both for morning and afternoon; right?

A I was there throughout the time Mr. Christoffel  
406 testified.

Q That wasn't my question.

THE COURT: He wasn't asked about the morning session. Do you want to ask him about it?

BY MR. ROGGE:

Q If I didn't, I will include it. Were you there all day without interruption? A You mean, did I leave the room at any time?

Q Right, Congressman; yes, sir. A I am sure I did. have occasion to leave the room briefly.

Q From time to time? A I would not know how many times; I don't recall.

Q It would be more than once, wouldn't it? A It could have been once or twice.

Q And this was a general practice with all the members of this Committee, they left from time to time? A It happens occasionally in Committee hearings, especially long ones, that members are called to the telephone, or go to the rest room for a few minutes.

Q And this was a long Committee hearing? A I don't recall the exact length of time, but I know the afternoon session ran into night.

Q This particular Committee sat for weeks, sat 407 for months, didn't it? A Months? I don't recall the exact length of time, but we had extensive hearings that lasted several weeks during that general period last spring.

Q Congressman, did you say you were there in the morning? A I don't recall if I was present in the morning or not. I was there at the time of Mr. Thomas testifying as I questioned Mr. Thomas. Mr. Thomas testified and the record will so show, I am sure, that Mr. Thomas testified immediately before Mr. Christoffel did.

I was there throughout the time Mr. Thomas testified and I was there throughout the time when Mr. Christoffel testified, and I also questioned Mr. Christoffel, as I am sure the record will show.

Q On this Saturday? A No, I questioned him on Monday.

Q Well, now, let us separate them. I don't want to mix up the Monday and the Saturday, Congressman. A Well, Christoffel—

Q (Interposing) We are directing our attention, so there is no misunderstanding, we are directing our attention to Saturday. A Saturday afternoon?

Q Yes. I will come down to Saturday afternoon right now. A Mr. Christoffel testified Saturday after-  
408 noon. I didn't question him Saturday afternoon. I was there when he testified and throughout the time

he testified on Saturday afternoon, and I was there also Monday morning when he testified, and I questioned him on Monday morning.

Q Now, you don't recall whether you were in and out on Saturday afternoon; is that right? A I recall I was present when Mr. Christoffel was sworn as a witness, and that I was present throughout the time he testified Saturday afternoon.

Q During this Saturday were you in and out of the room? A I might have been out of the room for a minute or two before Mr. Christoffel took the stand, but I can say definitely that while he was testifying I was interested in his testimony, and I didn't leave while he was testifying.

Q On this Saturday afternoon who all questioned Mr. Christoffel?

MR. PRATT: I object to that, if Your Honor please.

THE COURT: The objection is overruled.

THE WITNESS: I would not undertake to say. I recall that Mr. Hoffman questioned him. As to whether any others did, I don't know. The record will show that.

BY MR. ROGGE:

Q How can you be so sure about some things and not be sure whether you were there on Saturday morning?

MR. PRATT: I object.

THE COURT: I sustain the objection.

BY MR. ROGGE:

Q Do you or do you not recall whether you were there Saturday morning? A I can say that it was my habit to attend.

Q I didn't ask you that. A To attend meetings regularly. As to what time I arrived Saturday, I don't know the exact time. I do recall, as the record shows, that I was there when Mr. Thomas testified, and I questioned him, and I think he preceded Mr. Christoffel, as I recall it.

Q Now, do you recall whether Mr. Thomas was there in the morning or the afternoon? A I am sure he was in

the room, or was subpoenaed to be there in the morning. As to the exact hour when he was reached I don't recall.

Q You mean to say you are very definite that you were there all through the testimony of Mr. Christoffel on Saturday afternoon, yet you don't recall whether you were there on Saturday morning, or whether Mr. Thomas testified in the morning or the afternoon? A I would not undertake to fix the exact hour when either witness  
410 testified, by memory. It has been a long time. I don't remember the exact hour.

Q Do you recall whether Mr. Christoffel testified in the morning or the afternoon? A He testified in the afternoon.

Q You questioned him on the morning? A I questioned him on Monday morning, that is correct, on the following Monday.

Q Let us get back to this so I am sure of this.

You are not sure, however, whether Mr. Thomas testified in the morning or the afternoon? A I would not undertake to fix the exact hour when Mr. Thomas testified.

Q I am simply asking you whether it was morning or afternoon? Was it before or after lunch? A For your information, in these hearings we often run into the afternoon before the recess, sometimes going until one o'clock before we take a recess, depending on the witness on the stand.

As to the exact time when Mr. Thomas was reached, as to whether it was before 12 o'clock, or after, I simply cannot recall.

Q Let me ask you this: Do you recall whether you had a recess for noon hour on this particular Saturday? A I am sure we did. We always have recess for lunch.

411 Q Now, with reference to the noon recess, was it before or after that Mr. Thomas was on the stand?

MR. PRATT: I object to that. That has been pursued far enough.

THE COURT: I think he has answered it.

THE WITNESS: I would assume—

BY MR. ROGGE:

Q (Interposing) I am not asking for your assumption but your best recollection. If you do not have a recollection

— A (Interposing) My best recollection is Mr. Thomas testified in the afternoon because he preceded Mr. Christoffel, and Mr. Christoffel testified later, so that would follow Mr. Thomas' in the afternoon part of the hearing.

Q You are giving us that inference from looking at the record? A No, I am testifying.

Q As a matter of fact, you are not sure whether what you have reference to or that you were there during Mr. Christoffel's testimony, that took place on Monday morning or Saturday afternoon?

MR. PRATT: I object.

THE COURT: I sustain the objection.

BY MR. ROGGE:

412 Q I will try to reframe it, Congressman. You say you are not sure whether what you have told us as to what you heard of Mr. Christoffel's testimony, whether that is what you heard on Monday or whether that is what you heard on Saturday? After all, this is a long time and you are thinking of one rather than the other?

MR. PRATT: I object to that. That is an unintelligible question.

THE COURT: The witness testified he was there at the afternoon session of this Committee on March 1st. At that time he questioned Mr. Thomas but not Mr. Christoffel, but he attended again on Monday morning at which time he questioned Mr. Christoffel.

Now, what is your question?

BY MR. ROGGE:

Q I am asking whether it is not possible, Mr. Congressman, in view of the fact that at this late date you could not recall whether you were there on Saturday morning or not, and in view of the fact that at this late date you could not recall whether Mr. Thomas was there in the morning or afternoon, and whether it is possible you are confusing the



Monday morning session, when you questioned Mr. Christoffel, with the Saturday session? A No, I am not confused.

MR. ROGGE: That is all.

(The witness left the stand.)

413 MR. PRATT: Call Congressman Kennedy.

Thereupon—

*Honorable John F. Kennedy*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PATTON:

Q Your name is John F. Kennedy? A Yes, sir.

Q And you are a Member of Congress from the State of Massachusetts? A Yes.

Q And are you also a member of the House Committee on Education and Labor? A Yes, sir.

Q State if you were present at the meeting of that Committee at its opening session on the afternoon of March 1, 1947? A Yes, sir, I was.

MR. PATTON: Your witness, Mr. Rogge.

*Cross Examination*

BY MR. ROGGE:

Q How are you able to state that particular  
414 date, Congressman, mentioned as the date? Have you refreshed your recollection? A I remember the day. I remember that day very clearly because of the testimony that was given.

Q Let me ask you: Do you mean to say without refreshing your recollection you were able to say that March 1st was the Saturday? A No, I could not remember the day. I just remember—I looked at the testimony that I gave on that day.

Q In other words, you did refresh your recollection by looking at this volume, didn't you? Do you want to see it? A I don't know. In the matter of the day—as far as the testimony went, I was familiar with it, but as far as realizing it was March 1st or Saturday, I didn't look at the date. I looked through the testimony for a couple of minutes.

Q Now, my question was: Whether you didn't refresh your recollection by referring to this printed volume 4, in evidence, and that now is shown you? A As to the date; that is right.

Q Now, who was present at the time that Mr. Thomas was questioned? A I could not give you the names of all the Congressmen who were present on that day or 415 when he was being questioned.

Q Who was present when Mr. Christoffel was questioned? A I could not remember the list of men present.

Q Can you tell us the names of those that questioned Mr. Christoffel? A I can remember Mr. Hoffman. I can remember Mr. Kersten. Mr. Hartley was there, and I could not tell positively who else was there.

Q I am asking you who was there. He was asked questions. Who questioned Mr. Christoffel? A I can remember those three men questioned him.

Q Who? A I think Mr. Hartley, Mr. Hoffman, and Mr. Kersten.

Q This was on Saturday afternoon? A Yes; that is right.

Q Do you remember about what time that was? A I think it was fairly late in the afternoon.

Q Between 4 and 5 o'clock? A Well, it was in the afternoon. I would say it was fairly late in the afternoon. That is as well as I can remember it.

Q Do you recall, without looking at the printed record, whether Mr. Thomas was on the stand in the afternoon, in the morning or the afternoon? A I would say, 416 without having—

Q (Interposing) I am not asking what you would say. I am asking your recollection. A I would say, without having looked at it, I would say in the early afternoon.

Q Who were the other witnesses before the Committee that day? A Mr. Buse testified.

Q Who else? A Mr. Christoffel and Mr. Thomas are all that I remember.

Q Did I understand you correctly that you don't know who had questioned Mr. Thomas? A That is correct.

Q And the same thing is true for Christoffel?

THE COURT: No, he said he remembered three Congressmen questioning him.

BY MR. ROGGE:

Q Do you remember anybody else questioning Mr. Christoffel? A No, I don't remember.

Q You are familiar with the practice of the Committee, which was followed that day, of seating Republican Congressmen in the order of seniority to the Chairman's right, and the Democratic Congressmen in the order of seniority to the Chairman's left; is that correct?

417 A Yes, sir.

Q And was the practice followed that afternoon of calling upon them in the order of seniority, first those on the Republican side, and then those on the Democratic side? A That is correct.

Q And isn't it a fact that for long periods in that afternoon you were the only member who was on the Democratic side?

MR. PRATT: I object.

THE COURT: I will let him answer, if he remembers.

THE WITNESS: Well, I could not remember. That was almost a year ago. I could not remember who was on my side, exactly. We had about a hundred hearings during that period, and I would not remember each day, who was on my side. I remember that day but I don't remember who was on my side.

BY MR. ROGGE:

Q As a matter of fact, there was nobody there except you? A I could not remember whether there was or not.

Q One last question, Mr. Congressman: Were there any others, aside from Congressman Hartley, Congressman Hoffman, and Congressman Kersten, who questioned Mr. Christoffel on this Saturday afternoon?

MR. PRATT: I object to that as repetitious.

THE COURT: I think that the witness has testified that, according to the best of his recollection, he remembers only three questioned the defendant, Mr. Hartley, Mr. Kersten, and Mr. Hoffman.

THE WITNESS: And myself.

BY MR. ROGGE:

Q You questioned him that Saturday afternoon, too?

A Yes.

MR. ROGGE: And then I don't think he has answered the question, Judge.

THE COURT: I think he has. He said three and myself.

BY MR. ROGGE:

Q Were there any others? A There may have been. I just don't remember who they were or whether they asked Mr. Christoffel any questions, unless I went into the record.

Q What did you question Mr. Christoffel about on that Saturday afternoon?

MR. PATTON: I object to that.

MR. ROGGE: I am testing his recollection.

THE COURT: I will let him answer, if the Congressman knows.

THE WITNESS: As I looked at it this morning, I recall clearly what I asked about.

BY MR. ROGGE:

419 Q On this Saturday afternoon? A That is right.

Q What was it? A I asked him about, I in-

quited about his war record, his draft classification, and whether there was any request by the company that he should not be drafted. I asked him about and I was interested in the articles in one of the papers that I think was issued by some county council of which he was president, its attitude before July 21, 1941, when Russia was invaded, and the articles in that paper after that time. It showed after that that there was very great demand for assistance for England and lend-lease for Russia while before that time they were isolationists, and attacked President Roosevelt, and were against any assistance to England or any other countries fighting in the war.

Q Well, now, Congressman Kennedy, will you refer to the record and show me where that questioning took place on Saturday afternoon? A It may have been on Monday. It was on Monday.

Q In other words, on this that you have related, you were mistaken as to what you questioned Mr. Christoffel about on Saturday afternoon? You are mistaken about it?

A It was done on Monday; that is correct.

As I said before, I was relying on my memory. I was remembering the time Mr. Hoffman questioned him, but evidently my time was Monday morning.

420 Q I am asking you whether you were not mistaken when you told us of this questioning by yourself on Saturday afternoon? A I just answered it.

MR. PATTON: He said he was mistaken.

THE WITNESS: I said I was relying greatly on memory. I did remember the details pretty much of it but as to when I testified, I didn't. I didn't look at the details of that day this morning. I could only rely on my memory.

But I remember I was there Saturday and Monday, and evidently my testimony came on Monday.

BY MR. ROGGE:

Q So you were mistaken? A That is right; that is correct.

MR. ROGGE: That is all.



*Redirect Examination*

BY MR. PATTON:

Q I will ask you to refer to the printed record of Mr. Christoffel's testimony and state if you will, you can refresh your recollection, whether or not Christoffel was questioned by Congressman Kersten on Saturday afternoon?

MR. ROGGE: They are bound by his answer on that. What are they trying to do, impeach their own witness?

MR. PRATT: It is an opportunity to explain a clear mistake.

421 THE WITNESS: Is there a date given on this?

BY MR. PATTON:

Q That is the afternoon session to which you are referring of March 1, 1947. A That is Saturday afternoon!

Q Saturday afternoon; yes.

MR. PRATT: It ended at page 2101.

MR. ROGGE: I object to the coaching of the witness.

THE COURT: I think the record will show whether Mr. Kersten made any inquiry on Saturday or Monday. What difference does it make?

MR. ROGGE: I will tell you the difference it makes. It shows Congressmen are in error.

THE COURT: Oh, I don't think so.

THE WITNESS: I would like to answer that.

THE COURT: Go ahead.

MR. ROGGE: I object to this procedure. This is not the place for a speech by the witness.

THE COURT: The witness is not giving any speech that I know of.

MR. ROGGE: He was about to.

THE COURT: He testified that he was present at the session that Mr. Christoffel testified. He also stated he was present on Monday morning. He recalled that he

asked the defendant some questions. He said, first, 422 that he asked the questions on Saturday afternoon, upon an examination of the transcript of the testimony before the Committee, he discovered that he asked the questions on Monday morning.

MR. ROGGE: I want to note an exception to Your Honor's summary of the testimony.

THE COURT: You do not need an exception, Mr. Rogge. You know if the Court is in error that the Court of Appeals will correct it.

MR. ROGGE: Then I will not make it in the form of an exception; I will do it in the form of an objection.

THE COURT: Very well.

That is all, Mr. Congressman.

(Thereupon the witness left the stand.)

MR. PRATT: No more Congressmen left out there, Your Honor.

THE COURT: Now, do you want to argue the admissibility of certain evidence?

MR. ROGGE: Well, I think it might be to the convenience of the witness if I went ahead and finished my cross examination. I have further objections to this evidence, that is right, if the Court please.

THE COURT: Who was on the stand?

MR. ROGGE: Mr. Clarke.

689

*Clare E. Hoffman*

a witness called on behalf of the Government, being first duly sworn, testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, please? A Clare E. Hoffman.

Q You are Congressman from Michigan, that is true, is it not? A Fourth District.

Q Fourth District of Michigan? You have been in Congress a good many years, I believe. A Since 1935.

Q You are a member, are you not, of the House Committee on Education and Labor? A I am.

Q And were such on the first day of March, 1947? A I was.

Q Do you recall a meeting of the Committee on Education and Labor on that day? A I do.

Q And do you further recall the afternoon session on the 1st day of March, 1947? A I do.

Q Were you there at the beginning of that session in the afternoon of March 1, 1947? A I was.

MR. PRATT: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Congressman, this morning, before assuming the stand, did Government Counsel point out Mr. Christoffel to you? A I do not recall that he did. I saw Mr. Christoffel here. I recognized him, as the second man there, the middle man of the three on the right—my right.

Q My question to you, Congressman, was whether it was a fact that Government Counsel pointed him out to you before Court? A I do not think he did. I think I asked whether or not he was here. His back was towards me at the time.

Q Now, you refreshed your recollection by examining Volume 4 before taking the stand, didn't you?

691 A Did I?

Q Yes. A I did not.

Q You mean you remember independently that you were there without any refreshing of your recollection?

A I do.

Q And you remember the date was March 1? A No, I do not remember the date. I remember the date he testified, because I asked the questions.

Q Oh, yes, you questioned him, but you remembered it

without refreshing your recollection, you remembered it was on March 1. A No, I do not remember it was on—I know it was the day he testified. I was there.

Q He testified more than one day, didn't he? A I was there every time he testified.

Q How many times did he testify? A I can't recall that.

Q You don't remember how many different days he was there? A I do not.

Q Do you recall whether he was there in the morning or the afternoon? A I recall that we had difficulty  
692 in getting him in the morning, and I think he came in before noon. I am not positive.

Q Well, now, do you know who questioned him? A How is that?

Q Do you know who questioned him? A You mean who all questioned him?

Q Yes, and when. A I do not know how many members of the Committee questioned him. I know that I questioned him.

Q Do you know who the witnesses were on the particular day that you questioned him? A Without examining the record, I do not, unless I might say my best judgment is that the other officer of the Union, his name I do not recall, Buse or Busse, something like that?

Q Buse, B-u-s-e. A Buse. He was there.

Q Do you remember whether anybody else was there that day? A Yes, I remember others were there, but I could not give their names. You mean witnesses?

Q That is right. Do you recall recessing on the particular day when you were questioning Mr. Christoffel?

A I recall that after we were called to order by the Chairman there was some difficulty in obtaining the  
693 witness we wanted, but whether we actually recessed or merely sat there, I do not know.

Q Well, do you remember whether on the day you were questioning Mr. Christoffel the Committee sat all

day or only a half day? A I know we sat in the afternoon, but I do not know whether we recessed or not. Independent of the record, I could not swear to it.

MR. PRATT: If the Court please, I object to further testimony along this line. It is not at all within the range of direct examination.

THE COURT: Objection overruled.

BY MR. ROGGE:

Q You do not recall whether on this particular day you sat all day or a half day, is that right? A I know we sat more than half a day, but whether we recessed at noon, I cannot testify, and I assume you mean by half a day—we didn't meet, I guess, until ten o'clock.

Q Well, now, I will concede if the Committee met at ten and sat until noon, and then recessed, and then met in the afternoon, I will call that a full day, Congressman. I am just trying to get your recollection whether on this particular time you did sit in the morning as well as the afternoon. A My recollection is that we did sit  
694 more than half a day, that is, more than two hours.

Q Well, now, do you recall whether there was a recess on this particular day? A I think I stated before I do not recall whether we had a recess or whether we didn't. Independent of the record, I could not tell.

Q And do you recall whether—if you don't recall whether there was a recess, then you couldn't also tell me whether you came back promptly after the recess was over, or about ten or fifteen minutes late? A If the questioning was unfinished in the morning, I came back promptly.

Q Where did you come back from on this particular time? A That I couldn't say.

MR. ROGGE: That is all.

MR. PRATT: That is all, Congressman. Thank you, sir.

THE WITNESS: Thank you.



793

*Walter E. Brehm*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, please? A Walter E. Brehm.

Q Dr. Brehm, you are a member of Congress, are you not? A Yes.

Q From what district? A Eleventh, Ohio.

Q Are you a member of the House Committee on Education and Labor? A Yes, sir.

Q Were you a member of that Committee on 794 March 1, 1947? A Yes, sir.

Q Do you recall the day when Harold Christoffel first testified before that Committee? A Yes, sir.

Q On March 1, 1947? A Very definitely.

Q At the beginning of the afternoon session on that date, were you present? A That was the time he was sworn in. Yes, sir, I was present.

Q You were present at the beginning of the session, were you? A Yes, sir.

MR. PRATT: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Congressman Brehm, how do you happen to know this was March 1? A I have a very definite way of knowing it was March 1.

Mrs. Brehm, my wife, took seriously ill on Sunday and we called the physician on Monday. She was rushed to Doctors Hospital where she was operated on and remained in bed for nine weeks and you don't forget days like that.

Q Did you have lunch that day? A I certainly did. I always have lunch.

795 Q Where did you have lunch? A At the Capitol Dining Room.

Q When did you finish lunch that day? A When I was finished eating.

Q At what time, sir? A I would estimate it was 11:30 to quarter of 12.

Q When you finished eating? A That is right. I go to lunch early because I go to breakfast early.

Q Let me ask you this: Do you know what time Mr. Christoffel testified on this particular day? A I remember distinctly when he was sworn in when the House Labor Committee convened. I would guess—again this is a supposition—I would guess it was between 1:30 and 2 o'clock.

Q That was the time Mr. Christoffel was sworn in? A I say that is an estimate. I don't remember the exact time.

Q Do you know whether the Committee recessed that day? A We met in the morning and we recessed at noon, yes, sir.

Q Do you know about what time you recessed? A I didn't stay until they recessed; I remember that.

796 Q I beg your pardon? A I wasn't there at the time they recessed at noon.

Q You were there in the morning, however? A Yes, sir; I was there.

Q Who was on the stand in the morning? A I don't remember.

Q Who was on the stand that day besides Mr. Christoffel? After all, this was the day before your wife took ill. A Mr. Christoffel made such an impression on me that I distinctly remember Mr. Christoffel.

Q Do you remember anybody else that day? A Yes; I do. I think his name was Buse who was on in the morning, if I am not mistaken. I remember Mr. Christoffel distinctly.

Q Let's just be sure about this. He was sworn in when the Committee reconvened at noon or after lunch; is that right? A Yes, sir.

Q He was the first witness? A Yes, sir, as I remember.

THE COURT: Who?

MR. ROGGE: Mr. Christoffel.

THE WITNESS: I don't remember whether Mr. Christoffel was the first witness or not.

BY MR. ROGGE:

797 Q I understood you to say, Mr. Congressman, and I just want to be correct in the record, that Mr. Christoffel was sworn in when the Committee reconvened after lunch.

MR. PRATT: He did not say that, if the Court please.

MR. ROGGE: That is my recollection of what the witness said and I object to counsel for the Government trying to coach the witness.

MR. PRATT: I recant that implication.

THE COURT: I will sustain the objection.

THE WITNESS: I definitely remember when the House Education and Labor Committee met after noon, after lunch on Saturday, March 1, and I definitely remember Mr. Christoffel being sworn in as a witness.

BY MR. ROGGE:

Q When the Committee reconvened? A Certainly they could not swear him in if they weren't in session, could they?

Q I am just asking you. All I want is the information. A All right.

Q So that would mean Mr. Christoffel was sworn in about that time? A I wouldn't want to say what time. I don't know. I know he was sworn in when we were in session after lunch. If we took up at 2 o'clock and  
798 he was the first witness, it would be 2:15 or maybe 2:30. I don't have any way of remembering those

things. I remember the gentleman and remember the incident.

Q Was he the first witness after lunch? A I have answered that. I don't remember. If I were to make a guess, I would say "Yes."

Q Let me ask you this: Do you know whether he was before the Committee on more than one day? A No, I do not. I couldn't swear to that for the simple reason, as I say, Mrs. Brehm was operated on and from there on I neglected the hearings due to the fact that I was worried about my wife who was in the hospital seriously ill but I definitely remember him being sworn in because that was on Saturday and she did not take sick until Sunday night.

Q And you remember Mr. Buse? A Yes, I do. Yes, I do. I remember him being before the Committee but I wouldn't want to be positive as to the date but I again estimate it was Saturday morning.

Q You wouldn't remember whether that was Saturday or some other day? A No. I would say it was Saturday and, as I remember, he was alibiing as to why Mr. Christoffel was not present.

Q Who else besides Mr. Buse and Mr. Christoffel  
799 was there on that day? A I don't remember.

Q Those are the only two you remember? A That is right.

Q Do you know when you finished with Mr. Buse? A No, but evidently it was before we went to lunch.

Q Well, if you finished with Mr. Buse before you went to lunch and there weren't any other witnesses, then Mr. Christoffel would have been the first one after lunch, wouldn't he?

MR. PRATT: I object to the assumption, if the Court please. It is too much of a hypothesis.

THE WITNESS: I am to testify, as I understand it, to the things which I know to be true and I know it to be true that I was present when Mr. Christoffel was sworn in before our Education and Labor Committee on Satur-

day, March 1, some time after lunch. That is as specific as I can be.

BY MR. ROGGE:

Q I will ask you again, were there any other witnesses besides Mr. Buse and Mr. Christoffel? A I don't remember.

MR. ROGGE: That is all.

MR. PRATT: That is all, Dr. Brehm.

(The witness left the stand.)

MR. PRATT: Congressman Owens.

Thereupon—

800

*Thomas L. Owens*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PATTON:

Q Mr. Owens, will you give your full name, please, sir?

A Thomas L. Owens.

Q You are a Member of Congress, I believe? A I am, sir.

Q From what State and what district? A The Seventh District of Illinois.

Q On March 1, 1947, were you a member of the House Committee on Education and Labor? A I was.

Q State if you were present at the afternoon session of the meeting of the Committee on that date. A I was.

Q At the beginning of the afternoon session? A I was there at the beginning of the afternoon session, yes.

MR. PATTON: That is all.

*Cross Examination*

BY MR. ROGGE:

801

Q Congressman Owens, do you recall the witnesses who were before this Committee on March 1?



A Well, probably not entirely. I remember in the morning a man by the name of Buse being on the stand who occupied most of the morning.

Q Who else? A I remember Mr. Thomas being on the stand that day but I wouldn't say that he was there in the morning.

Q Who else? A Mr. Christoffel testified that day. I don't have really anybody in mind that day except Mr. Buse and Mr. Thomas and Mr. Christoffel. That is about all I can recall.

Q Do you remember whether Mr. Christoffel was there on more than one session? A He was there again on Monday, the following Monday. I recall that because I was there all day on Monday and I recall that.

Q Where did you have lunch on that particular day? A I don't know, sir. Probably at the House. I generally eat at the House Restaurant.

Q Do you remember whether the Committee recessed for lunch? A Yes. We always recess for lunch.

Q Do you recall this particular day? A Not being any different than the ordinary day; no, 802 sir, except that it was Saturday.

Q Have you refreshed your recollection as to this particular session by referring to your printed volume of hearings? A I did some weeks ago when this was first mentioned to me. I looked at the printed volume; not the whole volume but just about those couple of sessions.

Q You looked at this volume 4, is that right? A Yes. You see, I was one of the Committee from Milwaukee so I was quite familiar with the case. I looked at my volume. It is quite a large volume. One has, I think, what constitutes volumes 1 and 2 and the other was 3 to 5, or five complete volumes.

Q By the way, the questioning on this day went according to seniority; first the Republican side and then the Democratic side, isn't that right? A That is generally the rule.

Q Was that followed this particular day? A If I recall; it was, because it was Saturday and you would not have the men jumping out to answer a roll call as you will often have. Some days they will be called to the Floor for roll call and possibly somebody will question ahead of someone in seniority but, being Saturday, I don't believe that occurred that day.

Q Do you remember what you questioned Mr. 803 Christoffel about? A I don't believe I questioned him on that first day at all. I do recall what I questioned him about on Monday, that is, not entirely but I recall I did bring out the actions of the company with respect to Mr. Christoffel. He made some allegations—

Q (Interposing) I am asking you about Saturday, Congressman. A I did not examine him on Saturday, because he did not come in until the afternoon and, after making the statement and other things that occurred, Mr. Hoffman, I remember, had a fairly long interrogation, and I don't believe it left any time for anybody else that day:

Q<sup>2</sup> Did anybody else question him on Saturday? A I don't believe so, sir. I believe Mr. Hoffman took up about all that was left of Saturday because I remember Mr. Kearns was next and he made a motion for adjournment.

Q In other words, you were just ahead of Mr. Kearns in seniority; is that right? A Yes. It just happens that we both came in in the Eightieth Congress but it just happens the way we were drawn, yes, sir.

Q On this particular Committee— A (Interposing) Yes, I am just ahead of him.

804 Q In seniority? A There are two after me, Kearns and Nixon.

Q On the Republican side? A That is right.

Q After calling on you, the Chairman would call on Mr. Kearns if he were there? A That is generally the order of presentation, yes.

Q And you had ten minutes? A Yes; but we were given more. I would say Mr. Hoffman had a good deal

more than ten minutes. He had several ten minutes, I would say.

Q But each one was entitled to ten minutes? A At least.

Q They were given more if they wanted it? A That is right.

Q Do you remember what you questioned Mr. Thomas about? A Yes; I remember what I questioned Mr. Thomas about.

MR. PRATT: Just a moment, if Your Honor please.

THE WITNESS: Yes, I recall it.

MR. PRATT: He is talking about interrogation on the following Monday. It is not relevant to this inquiry at all.

THE COURT: Are you talking about Monday?

805 MR. ROGGE: I certainly am not.

THE COURT: He asked about Mr. Thomas.

MR. PRATT: I beg your pardon.

THE WITNESS: I think Mr. Thomas testified Saturday. I wouldn't be too certain of it but I do say the reason why I remember what I questioned Mr. Thomas about was that I handled the strike for the men out at the Stewart Die Casting Company and Mr. Thomas and I were quite involved in that matter and I questioned him quite seriously about what the police had done to the men out at that particular place.

BY MR. ROGGE:

Q Do you remember whether you questioned him on Saturday or on Monday? A No; I wouldn't try to say. I would think that it would be on Saturday but I wouldn't say definitely. If I did, it would have to be in the morning or the early part of the afternoon, but I was there for the entire session on Saturday.

Q Do you recall that you questioned Mr. Buse, too?

A Yes; I questioned Mr. Buse because he had been in my office the preceding day; he and Mr. Christoffel, too.

Q Do you remember whether that was the morning or

the afternoon? A That was the morning. He was the first one on.

Q You questioned him in the morning and then  
806 you went to lunch? A Yes. As I say, I don't have a definite recollection as to whether or not Mr. Thomas might have gone in after Mr. Buse. My mind is not clear on that because it is too far back. It is a year ago. If you would show me the record, I could tell you in a moment.

Q I have no hesitance at all in showing you the record, Mr. Congressman.

(The record was handed the witness.)

A Yes, that evidently is the morning. Mr. Thomas evidently followed Mr. Buse in the morning judging from the record. I had that thought in my mind that he followed Mr. Buse and evidently he took up the balance of the morning.

Q You mean Mr. Thomas took up the balance of the morning? A Yes, he must have.

Q I don't want to confuse you on it. I think you will find he was there in the afternoon. A That may be. He may have followed Mr. Buse. I am not trying to say whether he was there or was not.

Q You mean your recollection is not independent on it. It depends on what the record shows? A That is right. It does not show here, for instance, Mr. Thomas coming on. It doesn't show that any interim between the time—

807 Q (Interposing) Let me show you the recess time, if I may. A Yes, do that. You may do that although it should come along there.

Q There is the recess. A In other words, Mr. Buse did go on again in the afternoon and then Mr. Thomas followed him.

Q But you had done your questioning in the morning of Mr. Buse? A That is what I said before, yes, sir.

Q So you got back in the afternoon about 2:30? A Whatever time—

MR. PRATT: I object to that.

THE WITNESS: Whatever time we resumed the hearing, I got back then.

BY MR. ROGGE:

Q Do you know what time that was? A No, sir, I have no independent recollection of the hour but I know that I was there when the Committee met for the afternoon session. I know that, definitely.

Q But you don't know where you had lunch that day, do you, Mr. Congressman? A No, sir. I would say I had lunch in the restaurant because I have never, to my knowledge, had any luncheon outside of the cafeteria or the regular House Restaurant when we were in session. Today, I think, was the first time that I jumped out for a bite to eat. I remember the first time that I went to one of the restaurants along the street since I have been there.

Q How long do you usually take for lunch? A When I go to the House Restaurant, I will generally take half an hour or 45 minutes. There is always someone waiting so we try not to occupy the chair too long.

Q You said someone was always waiting. You meant in your office, is that right? A No; in the restaurant. You see, it is quite crowded there. Friends of Congressmen will come from various places and there will be a crowd and once you finish your luncheon, you don't like to sit there and hold them up because, between the hours of 12 and 2, it is always crowded.

Q Do you recall whether you had to wait on this particular day? A I don't, but probably not because it was on Saturday and on Saturday the House was probably not in session on that particular day.

Q I want to understand you correctly. I understood you a moment ago to paint a picture of this restaurant being very crowded with Congressmen and their friends waiting in line and now you say it was not very crowded.

Which was it? A Mr. Rogge, I gave you the gen-



809 eral picture of the thing each day. Sometimes there is a session on Saturday and the same exists but whether there was a session on that particular Saturday, I don't know. I would say "no", off-hand.

Q Do you remember what time you came back to the Committee session? A No, I don't, but generally the adjournments were to 2 o'clock. We adjourned anywhere from, say, up to even quarter to one but we would come back at 2 o'clock.

Q But you wouldn't know that without looking at the record? A I doubt if the record even shows it.

Q Well, it does. A It does—all right.

Q But you wouldn't have any independent recollection about that? A No, sir. A lot of things have happened in this last year.

MR. ROGGE: That is all.

(The witness left the stand.)

MR. PRATT: Congressman Kearns.  
Thereupon—

*Carroll D. Kearns*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined  
810 and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, sir? A Carroll D. Kearns.

Q You are a Member of Congress? A Yes, sir.

Q From what State and district? A The Commonwealth of Pennsylvania; Twenty-eighth District.

Q You are a member, are you not, of the House Committee on Education and Labor?

MR. ROGGE: Judge, just so that we get this thing started right—I don't object to leading questions often enough—

THE COURT: It is a preliminary question. The question is if the Congressman is a member of the Committee.

MR. ROGGE: I object to leading questions.

THE COURT: I will allow that question.

You are a member of the House Committee on Education and Labor?

THE WITNESS: That is correct, Your Honor.

BY MR. PRATT:

Q You were a member of that Committee since when? How long have you been a member of that Committee? A Since I became a Member of Congress.

Q When was that, Congressman? A January 3, 1947.

Q Do you recall the session of the hearings before that Committee at which Harold Christoffel testified? A I do.

Q Directing your attention to the first day of March, 1947, I will ask whether you were present at the opening of the afternoon session on that day? A I was.

MR. PRATT: That is all.

### *Cross Examination*

BY MR. ROGGE:

Q Congressman, I note that even as witnesses you are being called here today in the order of seniority, is that right? That is, Congressman Brehm was called then Congressman Owens and now yourself.

MR. PATTON: If the Court please—

THE COURT: Sustained.

BY MR. ROGGE:

Q The members of this Committee were arranged in order of seniority, weren't they; first on the Republican side and then on the Democratic side? A I think that is correct, sir.

Q And the one who preceded you in seniority was Congressman Owens, isn't that right? A Yes, he sits to my left.

Q And the one who sat to your right was Congressman Nixon?

MR. PRATT: If the Court please, I don't believe that is at all relevant. It is just time-consuming.

THE COURT: I will allow the question.

BY MR. ROGGE:

Q Is that right? A Will you repeat the question?

Q Congressman Nixon sat to your right and that was the foot end of the Republican side, is that correct? A That is correct, sir.

Q What witnesses were before the Committee on this particular day? A I think Mr. Busby—I think that is the way you pronounce it. Then Mr. Thomas and then Mr. Christoffel.

Q Do you recall that independently or only after refreshing your recollection from the printed volume, sir?

A I recall it only from my refreshing my mind with the volume but I have a very good picture of the afternoon.

Q Then did you refresh your recollection? I mean, have you looked at this volume previous to going on the stand? A Inasmuch as I am a Subchairman of  
813 the Labor Committee, I re-read the volumes often because I refer to certain testimony and, naturally, I would go over them.

Q My question is: Did you go over this volume before? A I have gone over it a number of times.

Q Did you go over volume 4 for the purpose of refreshing your recollection prior to going on the stand? A Not for this particular reason, no, sir.

Q When is the last time you saw this volume? A This morning.

Q You mean the particular volume relating to March 1? A Not particularly that day. I just happened to refer to it during a hearing this morning.

Q I am asking you when is the last time that you referred to the printed hearings or any record of the Committee for March 1.

THE WITNESS: I have repeated, Your Honor, a number of times that I keep referring to the testimony before the full committee any number of times.

MR. ROGGE: My question still is, Judge, when is the last time that he referred to the testimony which related, or any other Committee record which related to the date March 1, 1947, if he knows.

THE COURT: His answer was that he had referred to it any number of times.

814 MR. ROGGE: My question was when was the last time, Judge, before coming on the stand.

THE COURT: He said this morning.

BY MR. ROGGE:

Q Did you refer to this particular volume this morning, Mr. Congressman? A Yes, I did.

Q Then I misunderstood you a moment ago. A Yes; I think you did.

Q Just so that we have this answer—your testimony is, therefore that you referred to the hearing for Saturday, March 1, 1947; you referred to those this morning? A I referred to the volume, sir, this morning.

Q I am still not sure that I understood you and I want to be sure that I do. When did you last refer either to the printed volume or other record relating to the testimony for the first of March, 1947? A That particular day—I don't know as I ever looked it up particularly; just reading all the testimony there that I was interested in. I was not picking out any particular testimony.

Q My question to you, Mr. Congressman, and I want the best of your recollection and that is all that I want—when is the last time that you recall referring to the printed testimony or transcript, I don't care which

815 it was, or other record relating to the testimony for that specific day, March 1, 1947? A I was not looking for any particular day. I tell you that in my work I refer to the volumes of testimony consistently and frequently.

Q All right. In your regular work in the Committee, when is the last time prior to taking the stand that you have referred to the testimony for this particular day, March 1, 1947?

MR. PRATT: I object, if Your Honor please.

THE WITNESS: I was not looking for any particular day when I referred to it. I was informed about the day when I came to be questioned here on the particular day of March 1, as you questioned.

BY MR. ROGGE:

Q Do you recall who questioned Mr. Thomas? A Yes; I remember a lot of people questioned him.

Q Do you remember whether Mr. Christoffel was there on more than one session? A Yes. I recall; because I made the motion for adjournment on Saturday to carry over to the Monday meeting.

Q Do you remember how many people questioned Mr. Christoffel on Saturday? A No; I don't remember that.

Q You don't remember whether that was two, 816 three, four, five— A (Interposing) No, I wouldn't recall that.

Q Do you remember what time Mr. Buse was on the stand or Mr. Busby, as you call him. I think the right name is Buse. I am not trying to confuse you. A Yes; I think it is Mr. Buse. I thought he was on in the morning.

Q Do you know whether he was on in the afternoon? A Yes, and so was Mr. Thomas, as I recall it. Mr. Christoffel did not have much time in the afternoon, as I recall. He was held over.

Q You mean he came on late in the afternoon, is that right? A That is right.

Q About what time did he come on, about 4:30? A I don't recall.

Q Do you recall what time you adjourned on that day? A I think it was about 5:25 or somewhere around there.



Q You remember you adjourned around 5:25?

MR. PRATT: He did not say that.

THE WITNESS: I said I thought it was around that time because it was getting late.

MR. ROGGE: If Your Honor please, he fixed the time at 5:25.

THE COURT: He said around 5:25.

817 BY MR. ROGGE:

Q You recall that this Committee adjourned around 5:25 in the afternoon. Suppose you tell us when you took the noon recess.

MR. PRATT: I object, if Your Honor please.

THE COURT: He may answer.

THE WITNESS: I don't recall.

BY MR. ROGGE:

Q Do you recall what time you got back in the afternoon? A I was there punctually on time.

Q Do you remember what time that was? A I don't recall the time we reconvened because lots of times it differs.

Q Without referring to the printed record you wouldn't know as to this particular day? A No, I would not. I would not recall, sir.

MR. ROGGE: That is all.

MR. PRATT: Just one more question.

Do you happen to know where Congressman Lesinski is at the present time?

THE WITNESS: The only information that I would have, sir, would be that Congressman Landis and I tried to get hold of him about 12:30 and we were informed by his secretary that he is in Bethesda Hospital. He is  
818 there for two days' observation prior to an operation that is going to be performed upon him.

MR. PRATT: Thank you, sir.

(The witness left the stand.)

MR. PRATT: Congressman Gwinn.

Thereupon—

*Ralph W. Gwinn*

was called as a witness by and in behalf of the United States and, being first duly sworn, was examined and testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, please? A My name is Ralph W. Gwinn.

Q What is your official position in the Government service? A I am a Representative in Congress from the Twenty-seventh District, New York. That is the Hudson River section of Westchester County.

Q And you are a member of what Committee of Congress, Congressman? A I am a member of the Committee on Education and Labor.

Q How long have you been a member of that Committee? A Since its organization in the Eightieth Congress.

819 Q That is to say since January of 1947, is that right? A That is right.

Q Do you recall the defendant, Harold Christoffel, having been before that Committee as a witness? A I do.

Q Do you remember about when it was? A It was Saturday, I think the first of—I am not sure—but I think it was the 1st of March.

Q The 1st of March, 1947? A That is right.

Q Were you present on that day? A I was, yes.

Q Were you present when the Committee convened in the afternoon of that day? A I was.

MR. PRATT: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Mr. Congressman, do you recall the witnesses who were before the House Committee on Education and Labor

on this particular March 1, 1947? A I remember Mr. Buse. I cross examined him. I remember Mr. Thomas and Mr. Christoffel.

Q This Committee had a regular procedure that it followed on this particular Saturday, didn't it, as  
820 on all other days? A It has a regular formal procedure, yes, sir.

Q The Republicans being seated in the order of seniority on the Chairman's right and the Democrats likewise in the order of seniority on the Chairman's left? A They generally take those positions, yes, but not always.

Q And the Chairman calls upon different members of this Committee in the order of seniority, asking them to question the witnesses? A Generally so, yes.

Q And then you have a first round when each member was allotted ten minutes and sometimes they took more for questioning the witness, is that right? A We very seldom get ten minutes.

Q What? A We very seldom get ten minutes, sir.

Q Wasn't that the rule of this Committee that you could have ten minutes if you wanted it? A The rule has been or was then, generally, five minutes.

Q And you had a second round of questioning if you did not get through with all your questions on the first round? A Sometimes, yes.

Q Of course, most of the members would not  
821 have any questions on the second round, is that right? A They might have questions but they weren't invited very cordially to ask them, sometimes.

Q The one who preceded you or those preceding you in seniority after the Chairman—the Chairman of this was Mr. Hartley, of course? A The Chairman was Mr. Hartley, yes.

Q And the next in seniority was Mr. Landis? A That is right.

Q And then Mr. Hoffman? A That is right.

Q And then Mr. McCowen?

MR. PRATT: If the Court please, I don't see the relevancy of this, and I object to it.

THE COURT: I will let him answer.

MR. ROGGE: I have a purpose.

BY MR. ROGGE:

Q. And then Mr. McCowen? A. That is right.

Q. And Mr. Schwabe? A. That is if they were all sitting as they usually do but they don't all sit in that order.

Q. And then Mr. McConnell? A. That is right.

822 Q. So that if he was there, the one who sat on your left was Mr. McConnell; right? A. If he was sitting in the order of seniority, that is true. It would be Mr. McConnell on my left and Mr. Buck on my right.

Q. That is right. Were there any occasions on this particular Saturday that you know of where Congressmen were called out of the order of seniority to question the witness? A. You mean on this particular afternoon?

Q. Or morning. A. I don't recall on that particular afternoon or morning they were sitting out of order.

Q. You don't recall that they were? A. I don't recall that they were; no. Neither do I recall that they sat in order.

Q. Do you recall whether you sat in your customary place on this particular Saturday, or not? A. I don't recall that I sat—I think it is likely that I did but I don't recall that I sat in my chair on that particular day but I think so.

Q. You think you did? A. Yes.

Q. Do you recall questioning Mr. Buse? A. Yes.

823 Q. If the regular procedure were followed, would you come ahead of Mr. Nixon? A. That is right.

Q. Will you look at page 2004 and tell me why, on this particular morning—if this refreshes your recollection—why you were called after Mr. Nixon?

MR. PRATT: To that I object.

THE COURT: Sustained.



BY MR. ROGGE:

Q Do you recall what particular time this Committee convened on that day, Mr. Congressman?

THE COURT: When; in the morning or the afternoon?

MR. ROGGE: The morning.

THE WITNESS: My recollection is 10 o'clock. We met in the afternoon of Saturday, I think, too.

BY MR. ROGGE:

Q What? A It met on the afternoon of Saturday, I think. There may have been only one session that day. I am not certain of that.

Q You mean you are not sure whether you adjourned for lunch or not? A I don't recall.

Q You are not sure whether you had one long session beginning in the morning or whether you had a session both morning and afternoon? A I am sure we had a session in the afternoon.

Q Do you know whether you had one in the morning? A My best recollection is that we did have one in the morning.

Q Do you remember when it was that you questioned Mr. Buse? Was it morning or afternoon? A I think I could tell if you will let me have that book.

Q Isn't it a fact that the reason you were called out of turn on this particular Saturday morning is the fact that you did not get there at 10 o'clock.

MR. PATTON: Object to that, Your Honor.

THE COURT: He may answer.

THE WITNESS: I am very sure that I attended the session when it was called.

BY MR. ROGGE:

Q I am asking you whether, on that particular morning, you did not get there after 10 o'clock, Congressman. A I think not, sir.

Q Looking at page—or you can look at any of these pages, if you like—but beginning at the beginning and going through 2004 or any others—



THE COURT: Does that record show what time the various members of this Committee arrived at the hearing?

MR. ROGGE: It does not but I am asking this witness whether looking at these pages doesn't refresh his recollection that he came in after 10 o'clock. If it doesn't refresh his recollection, it doesn't refresh it.

THE WITNESS: Well, I think it very unlikely that I was there after 10 o'clock because I examined Mr. Buse who was the first witness. I remember his being sworn.

BY MR. ROGGE:

Q Isn't it a fact that, on that particular morning, the Chairman called upon you after Mr. Nixon had said, "That is all"? A Well, that may be.

Q I am asking you whether it isn't. A I don't remember that I came after Mr. Nixon. Apparently, I did.

Q Is the record inaccurate? A No, I don't think it is.

Q Mr. Nixon was several down from you in seniority or you were a number of places ahead of Mr. Nixon in seniority, weren't you?

MR. PRATT: I am objecting to the question. This relates to the morning session. It is irrelevant.

THE COURT: I will sustain the objection.

BY MR. ROGGE:

Q Do you know, without looking at the record, whether you adjourned for lunch on that particular day, Mr. Congressman? A I don't remember whether we adjourned for lunch or not.

Q Can you tell us from when to when you attended this Committee meeting? I mean, you began at 10 o'clock, is that right, according to your statement? A That is right, and I was there until the session closed and we adjourned the meeting.

Q Do you know what time that was? A I don't know the exact hour, no.

MR. ROGGE: That is all.

MR. PRATT: That is all. Thank you, sir.  
(The witness left the stand.)

859 MR. PRATT: The Government calls Congressman Nixon, from California.  
Whereupon

*Richard Nixon*

a witness called on behalf of the Government, having been first duly sworn, testified as follows:

*Direct Examination*

BY MR. PRATT:

Q Will you state your name, please, to the Court and Jury? A Richard Nixon.

Q You are a member of Congress, are you not? A I am.

Q From what state and District? A From the Twelfth California District.

Q Are you a member of any Committee of the House of Representatives? A Yes. I am a member of the Committee on Education and Labor.

Q How long have you been a member of that Committee, Congressman? A During the period of the 80th Congress.

Q Since January of 1947, is that right? A That is correct.

860 Q I will ask you whether you attended a meeting of that Committee at the time that the defendant Harold Christoffel testified before the Committee? A I did.

Q I will ask you whether on that day, on the first day that he testified, whether you were present at the opening session in the afternoon of that day? A I was.

Q Do you know what date that was? A I believe it was March 1.

Q As I understand it, you say you were present at the opening session in the afternoon of that day? A I was.

Q At the opening of that session? A The opening of the session, yes.

MR. PRATT: That is all.

*Cross Examination*

BY MR. ROGGE:

Q Congressman, do you remember the date independently, or have you had occasion to refresh your recollection as to when it was? A I remember the day independently. It was on a Saturday, on the first of March. Q Do

you remember that the first of March was 861 Saturday without having looked at Volume 4? A

I haven't looked at Volume 4, but I know the first of March was Saturday.

Q And you remember that independently as of this time? A Yes, that is correct.

Q Do you remember whether you had a session in the morning, as well as the afternoon of this particular day?

A Yes, there was a session in the morning.

Q Do you remember what time that morning session began? A No, I don't recall, exactly.

Q Do you remember who was there? A What members of the Committee?

Q Right. A I couldn't remember the names of the Committee; no.

Q Do you remember whether you adjourned for lunch? A Yes, we adjourned for lunch, I believe.

Q Do you remember at what time you adjourned for lunch? A Not the exact time; no.

Q Do you remember when you reconvened after lunch? A As I recall, it was at 2:00 o'clock, but I am not sure.

862 Q Do you remember what time you adjourned that particular day? A Late in the afternoon.

Q Now, the Committee was ranged, the Republicans in the order of seniority to the right of the Chairman, and the Democrats likewise in the order of seniority on the left, is that right? A Yes.

Q And your place was at the foot end on the Republican side? A That is correct.

Q And the one immediately preceding you in seniority was Mr. Kearns, is that correct? A Mr. Kearns; that is correct.

Q And the one who followed you was the senior member on the Democratic side? A Mr. Lesinski.

Q And the Chairman called upon the members of the Committee who were present in the order of seniority?

A Generally that was the case, although the procedures of the Committee were somewhat flexible. One member might step out, to his office to sign his mail, for example, and during that period the Chairman might call on another member who was lower in the order of seniority.

Q And then if that member should come back, 863 he would go back and call on him? A Yes, he would pick him up at some time during the hearing.

Q For instance, Mr. Gwinn was considerably ahead of you in seniority of this Committee, wasn't he? A Yes, he was.

Q And if Mr. Gwinn were there—by the way, was this regular procedure followed on this particular Saturday?

A Well, it was followed generally throughout the hearings.

Q Does that include this particular Saturday? A Yes, I don't remember any specific deviation that Saturday.

Q So that if Mr. Gwinn were there and you were there, the Chairman would call upon Mr. Gwinn ahead of you to question a particular witness? A Normally that would be the procedure, yes.

Q The one that would be called upon immediately preceding you would be Mr. Kearns? A That is correct.



Q And the one immediately following you would be Mr. Lesinski? A Yes, assuming they all were present.

Q That is right. Now, do you remember what time Mr. Gwinn came in on that Saturday morning?  
864 A No, I don't remember.

Q Now, let us look at the record and see whether that refreshes your recollection. You are familiar with the transcript of the hearing? A Yes, this is a copy of the hearing.

Q When did you last see that volume, incidentally? A I would say about when I read the hearings, approximately nine months ago, is the last time I have looked at this volume.

Q Let us look at Page 1998. Isn't it a fact that the Chairman called on Mr. Kearns ahead of you, and when Mr. Kearns indicated he was through by saying "That is all," that the Chairman then called upon you, is that right?

MR. PRATT: If the Court please, I object. This relates to the morning session. I don't think it is material, and certainly is not anywhere within the range of the direct examination.

THE COURT: I will sustain the objection.

BY MR. ROGGE:

Q Now, do you remember what time you got back for the afternoon session? A I already answered that question. I don't recall the exact time.

Q Isn't it a fact when you got back there on this particular day—have in mind the Democratic side—I mean  
865 you faced the Democratic side, isn't that right, and you were ranged in a semi-circle? A That is correct.

Q So that you faced over to the Democratic side, right?  
A Yes.

Q This particular day, at the time you returned after the noon recess, do you recall anybody on the Democratic side, aside from Congressman Kennedy? A I don't re-



call any of the members who were or were not present as of any specific day during the hearings, including this day.

MR. ROGGE: That is all.

MR. PRATT: That is all. Thank you, Mr. Congressman.

876 MR. ROGGE: Your Honor has a pending motion. Has Your Honor decided which way you are going to rule on that, in regard to witnesses?

THE COURT: What is your motion now?

MR. ROGGE: I also want to make motions for an acquittal, if the Court please. I would like to have the benefit of going through yesterday's record before arguing that.

THE COURT: Well, I think I will hear your argument now.

MR. ROGGE: I may say at the outset, if the Court please, that I have no intention of trespassing on the Court's time. I am not here to try Your Honor's patience. I am not trying here to delay this case, but I do have certain ideas about it that I would like to present to  
877-878 you. I haven't had a chance to assemble all the points that I think would occur to me if I had a chance to go to the record.

I have no desire to lengthen this. My only desire was to be able to list all the various points I will indicate on an acquittal.

I mention that one of the first ones I should want to argue on that, and again I don't want to go into it beyond the point where Your Honor feels that it will be helpful—Your Honor will have to admit that the memorandum which we prepared on the quorum point was a carefully prepared memorandum.

I felt I was hurried in my argument on that, yet nevertheless I think Your Honor felt I argued too long, because I think it was the following day when I mentioned I wished to be heard on the point as to who could raise the point of a quorum, and when it could be raised, Your Honor stated,

you did it in the presence of the Jury, and I thought in a depreciating way, maybe it wasn't intended that way, that you had heard me for over an hour already.

I will state the points which occur to me as I stand on my feet this morning.

The quorum point, for instance: I know as I have thought this over I have wished to call to Your Honor's attention again, without unduly burdening you, to the fact that the quorum point has been raised, it has been raised in 879 the halls of Congress itself, after the event occurred, and the objection was sustained.

Here under Your Honor's ruling no attempt has been made, as a matter of fact the Government has abandoned any attempt to show there was a quorum present when the man was sworn and when he testified. They know very well they can't show it.

We had a procedure here which amounted, in effect, to a roll call, which Chairman Hartley said he followed religiously, if Your Honor please, and you can go through these volumes of the record, and I have gone through a number of them, and thousands of pages, and Your Honor will say it was a set procedure that man followed.

He called on these people in the order of seniority. He, himself, admitted on the witness stand, so did the witness McArthur, that it was in effect a roll call on each different witness.

When you go to that roll call on the witness Thomas, who was the one who preceded Mr. Christoffel, that roll call, that record will show that there were at most but eleven there.

McArthur himself said when we were comparing the validity, the weight of things like Exhibits 3, 4 and 5, the so-called journal page and the tally sheets, he said, "Well, of course the printed record of the hearings would be better."

I can give Your Honor exactly what he said, if Your 880 Honor will indulge me just a moment.

Incidentally, while I am on that point, the journal

page, the so-called journal page, was inaccurate in at least three respects.

In the first place, it didn't note that the Committee went into executive session at five o'clock, although McArthur stated that should have been in there.

It didn't note that the Committee recessed for lunch.

It also stated on Monday morning the Committee reconvened at nine, when, as a matter of fact, the printed record shows it reconvened at ten.

He stated that the stenographic minutes would be taken down more carefully, more in detail; the so-called journal—that is his own characterization—was a rough outline.

So when you get to what I consider a much more accurate record than the tally sheet—

And Your Honor will recall the last Congressman. He couldn't recall anyone else who was there when he came back at that afternoon session, but if you will look at the printed record of the hearing you will see that there were at most eleven there when Mr. Thomas was questioned, which I submit, on the testimony you have already had about Congressmen going in and out to answer phone calls, that is the maximum number that was there.

Does Your Honor think all eleven of those men would sit there for hours while the rest of them were questioning without going out on some business?

Your Honor knows that wouldn't happen.

Furthermore, when you carry the evidence beyond that point, Chairman Hartley stated from that witness stand himself that he could not recall anybody, he could not think of anyone who came in after that questioning of Thomas.

And you also have some direct evidence from the witness McStroul there were at most eight or nine there.

So, when you come to the question of whether there was a quorum there when the man was sworn, and when he testified, not only can't the Government show beyond a reasonable doubt that there was a quorum there, but the evidence already shows that there was not a quorum there at that time.

I think it is contrary to reason to think that you can have as many Congressmen as the Government says.

The Government would have you believe that there were thirteen Congressmen actually physically present, all at the same time.

That is more than you very often have in the Halls of Congress itself, and this was on a Saturday afternoon, and at the time Mr. Christoffel testified on the questions on which the Government is charging perjury, it was close to five o'clock—I think it was just about five o'clock on a Saturday afternoon, so I say if you get down to who actually was there at that time, the record already shows there was not a quorum.

But Your Honor has ruled if there was a quorum there at 2:15 and none of the members raised the point then about a quorum, that conclusively binds this record.

I want to submit on the basis of authorities which I previously called to Your Honor's attention, that ruling is wrong.

You take a case which arose in the House itself, and this is in Hind's Precedents, and you had a case where testimony had been taken. No point of no quorum had been raised, and the testimony was taken. The point was raised later, and what happened? Because of the fact, and pursuant to a Committee resolution, the witnesses who testified had to appear before a quorum of the Committee.

Now, the point of no quorum was not raised at the time of the testimony.

There is nothing in the cases which say that a point of no quorum has to be raised at the time of the hearing by a Committee member.

As a matter of fact, the authority is to the contrary.

This, if Your Honor please, is a criminal case, where a man's liberty is at stake.

Suppose you had a situation where either all the members of the Committee dropped dead, or there is only one left, and the hearings had gone on?

Under Your Honor's ruling, it would be immaterial. The man would still be guilty of perjury.



The cases just don't hold that way, not even those on the floor of Congress itself.

I call Your Honor's attention to another case, the House Committee on Territories.

There, again, no point had been made at the time of the hearing.

Mr. Houston for the Committee says:

"The committee was called and met, and six or seven members were in the room at a time—I am not sure of just the number. It requires nine to make a quorum. There were not nine present in the room at any given time, but they came into the room, cast their vote, told how they wanted to be recorded, and went to attend to their business. There was an attendance of a quorum; they were not all present in the room at any one time."

There, again, no Committee member at the time this Committee was meeting raised the point. The point was raised later, was raised, if you please, on the floor of  
884 the House, after the Committee had finished its deliberations.

But what does the Speaker say?

"The chair does not think that is a committee meeting. On pages 396 and 397 of the Rule Book, beginning on page 395, the chair rendered an elaborate opinion on the very same subject matter, after a most careful scrutiny and consideration. A committee sits as a unit and you cannot get a bill up here by getting your report signed by various members of the committee or any other way except by a formal vote of the committee as a committee, a quorum being present, if anybody insists on the rule."

Now, the point wasn't raised there. As a matter of fact the Committee members on both sides got up and said, "look Mr. Speaker:

"This is the way this thing is done in almost every committee of the House at some time. A meeting is regularly called. The Chairman is present. The members of the committee begin to come in, one after another, some re-



maining and others asking to be recorded as present. Finally the vote shows that a quorum is present though actually a quorum may not be physically present. The point of no quorum is not made in the committee and the  
 885 business of the committee is proceeded with. According to the committee records, a quorum is physically present. The evidence of the record ought not to be assailed in this body but should be regarded as final.

"We do business in the House and Committee of the Whole every day without a quorum but a quorum is presumed to be present."

And what does the Speaker say?

"Now, it may be true and I have no sort of doubt it is absolutely true that this process of one coming in and another dropping out goes on in these committees. That is all right as nobody raises the point, but when the point is raised"—

And when was it raised? After.

"—you have to consider it according to the rule." And there are other authorities to the same effect.

As a matter of fact, that has been followed so often that the rule of a quorum being present is now in the Reorganization Act.

There is a rule, if Your Honor please, saying:

"No measure or recommendation shall be reported from any such committee unless a majority of the committee was actually present."

And note that language, if Your Honor please:

886 "unless a majority of the committee was actually present."

Something which the Government, under Your Honor's ruling, has abandoned proof on. They couldn't prove it anyway.

As I say, I don't want to try Your Honor's patience on it, but I say to you that especially in this case, a criminal case, where a man's liberty is at stake, there is no support whatever for Your Honor's ruling that some committee member has to challenge it at the time.

Certainly those committee members by being absent could not waive another American citizen into a felony, but that is the result of Your Honor's ruling, so if Your Honor follows what I think is the law, and there are numerous other cases cited in that brief, and my associate calls my attention to another point, where the presumption of innocence overrides any presumption of regularity. I have covered that to some extent, and as I have said, I don't want to argue this to the point where Your Honor thinks I am wasting the Court's time or my time.

I think that that is the law, and if Your Honor has any doubt on the point, I would like to argue it at more length. I argued this business of conflicting presumptions only briefly. I have no doubt that the law is correct on it.

887 I am not interested in being told that if Your Honor is wrong I can go across the street. I would like for us to reach the right result as soon as we can in this case. It is always small comfort to me to have a Judge tell me if he is wrong—

—THE COURT: You should confine your argument to the point.

MR. ROGGE: Well, on this presumption of innocence, if Your Honor please, and again I don't—my associate feels I should argue that to Your Honor.

THE COURT: Argue what?

MR. ROGGE: The point that the presumption of innocence overrides these other abstract presumptions.

THE COURT: You have already argued that at great length, Mr. Rogge.

MR. ROGGE: I have argued that, and that is why I say I don't want to argue it beyond the point of being helpful to you.

I think the law is clear that the presumption of regularity, if there is such in this case, must bow to the presumption of innocence, which is one of the oldest, one of the most solid presumptions in our law.

We are a free people. It has always been our idea that

it is better that ten guilty men escape than one innocent man go to jail. The idea is that a man may sit back, rely on his privilege against self-incrimination and the presumption of innocence and wait, if Your Honor please, until the Government proves each and every essential of the crime against him beyond a reasonable doubt.

And I submit to Your Honor that one of those elements is to show that thirteen members were present when he was sworn and when he testified, and that they must show that beyond a reasonable doubt and they haven't shown it. The evidence, indeed, is to the contrary.

On that basis I say to Your Honor that there must be a direction of acquittal as to all counts of the indictment.

Now, the indictment in this case, and I will mention to Your Honor the points that occur to me, and I would like to have permission, if there are points which on looking at the record I feel that I have overlooked, that I would still like to call to Your Honor's attention those.

There are six counts in this case, and of course we start out that this is a perjury case, and you have more than the measure of proof in your ordinary criminal case.

Not only must the Government prove all the elements of the offense beyond a reasonable doubt, but in a perjury case there is an added measure of proof required.

There must be two witnesses, or a witness plus corroborating circumstances.

889 THE COURT: Or a transcript of the testimony.

MR. ROGGE: Now, let us look at the counts involved.

I will take up one count on which I submit to Your Honor there isn't the slightest bit of evidence in this record, Count 2.

They said this man lied when he said he was never a member of the Communist Political Association.

What evidence is there in this record with reference to member of the Communist Political Association.

899 MR. ROGGE: I say the first of those is the quorum point. I think on the basis of that point Your Honor should direct an acquittal as to all counts in this indictment.

MR. PRATT:

1039 As I understand it, the defense rests and the Government rests.

1040 THE COURT: Very well.

*Discussion on Prayers.*

1074 THE COURT: I will now consider the instructions requested by the defendant in this case, which are 43 in number.

Defendant's Request for Instruction No. 1.

You ladies and gentlemen of the jury are the sole and only judges of the facts in this case and you must determine the facts for yourselves solely on the basis of the relevant evidence adduced before you.

THE COURT: I will grant instruction number 1.

MR. PRATT: I would like to have copies.

THE COURT: Haven't you got them?

MR. ROGGE: I am sorry, I overlooked that, Judge.

THE COURT: I will grant number 1.

Defendant's Request for Instruction No. 2.

The Court is permitted to summarize and discuss the evidence in order to assist you, the jury, in arriving at its conclusions; but, if your recollection of the evidence differs in any respect whatsoever from the Court's recollection, then your recollection must prevail because the final decision on the facts is entirely within your province, while the Court's instructions are binding on you only as to the law.

1075 THE COURT: I will grant number 2.

Defendant's Request for Instruction No. 3.



I charge you that the fact the defendant Christoffel has been indicted and is charged with the crime of perjury is not in itself any indication of guilt and no inference whatsoever is to be drawn against him from that fact. An indictment is merely the machinery and the procedure that the law provides for bringing a defendant before the Court and placing him on trial. It is no sense evidence.

THE COURT: I will grant number 3.

Defendant's Request for Instruction No. 4.

The defendant Christoffel is presumed to be innocent of the charges made against him and this presumption relates to every essential element of the crime with which he is charged herein, and this presumption abides with him until it is overcome by legal evidence which establishes his guilt to your satisfaction beyond a reasonable doubt.

THE COURT: I will grant number 4.

Defendant's Request for Instruction No. 5.

I charge you that if you find the defendant guilty, you must find the defendant herein guilty beyond a reasonable doubt. Proof beyond a reasonable doubt is such as will produce an abiding conviction in your minds to a moral  
1076 certainty that the facts existed that are claimed to exist so that you feel certain that they exist. A balance of proof is not sufficient. In a criminal case you as jurors ought not to condemn unless the evidence excludes from your minds all reasonable doubt; unless you are so convinced by the evidence of the defendant's guilt that you as prudent men and women would feel safe to act upon that conviction in matters of the highest concern and importance to your own dearest personal interests.

THE COURT: I will grant number 5.

Defendant's Request for Instruction No. 6.

You are instructed to acquit the defendant Christoffel unless you find beyond a reasonable doubt that each and every one of the following five matters was proven by the Government:

- a. That the testimony was given under oath.



- b. That the oath was administered and the testimony taken by a body authorized by law to do so.
- c. That the testimony was material.
- d. That the testimony was false.
- e. That the testimony was willfully false.

THE COURT: I will grant number 6, with the exception of line E. I am striking the words "and corruptly" because I am instructing the jury as to what is meant by the word "willfully."

Defendant's Request for Instruction No. 7.

As applied to this case you must therefore return a verdict of not guilty as to this defendant on each of the counts of the indictment unless you find as to each count and beyond a reasonable doubt that the following facts exist:

THE COURT: Number 7 will be granted.

Defendant's Request for Instruction No. 8.

That the House Committee on Education and Labor before whom this defendant is alleged to have appeared had the lawful power and authority to make the investigation it was conducting.

THE COURT: I am striking paragraphs 8 and 9 because I am instructing the jury as a matter of law that the House Committee on Education and Labor before whom the defendant appeared had the lawful power and authority to make an investigation.

Defendant's Request for Instruction No. 9.

That the defendant Christoffel appeared before a quorum of at least 13 members of the said Committee.

THE COURT: Of course, number 9 goes out because I will instruct them with reference to a quorum and what it is in my own language to which, of course, you have your rights preserved.

Defendant's Request for Instruction No. 10.

That the defendant Christoffel thereupon took an oath administered to him by a person having the lawful power and authority to administer the oath.

Defendant's Request for Instruction No. 11.

That the defendant Christoffel uttered before the same quorum the statements attributed to him at each count of the indictment.

Defendant's Request for Instruction No. 12.

That the said statements were in fact and in reality false and untrue.

Defendant's Request for Instruction No. 13.

That the defendant Harold Christoffel willfully made these false statements knowing full well that these statements were false and untrue and not in accordance with the facts of the matter.

THE COURT: Therefore, I will grant number 7, together with paragraphs 10, 11, 12, and 13.

Defendant's Request for Instruction No. 14.

You are instructed that a committee of Congress and in particular the House Committee on Education and Labor is not authorized by law to administer an oath or to take testimony except when a quorum of such committee is present.

1079 THE COURT: Number 14 is denied.

Defendant's Request for Instruction No. 15.

You are instructed that a majority of the House Committee on Education and Labor is 13 members; and at least that number must be actually and physically present before you may find a quorum to be in attendance.

THE COURT: Number 15 is granted.

Defendant's Request for Instruction No. 16.

You are therefore instructed to acquit the defendant Christoffel unless you find that the Government has proven in this case beyond a reasonable doubt that a quorum of at least 13 members of the House Committee on Education and Labor was present at the time that the oath was administered to this defendant and at the time it was alleged by the Government that the defendant Christoffel did not testify truthfully.

THE COURT: Number 16 is denied.

Defendant's Request for Instruction No. 17.

You are instructed that if there was no quorum of 13 members of this House Committee present at the time of the administration of the oath then you are to acquit the defendant Christoffel entirely and render a verdict of not guilty.

THE COURT: Number 17 is denied.

Defendant's Request for Instruction No. 18.

1080 You are further instructed that you are to acquit the defendant Christoffel as to any charge in the indictment that is based upon testimony given at a time when a quorum of the Committee was not present.

THE COURT: Number 18 is denied.

Defendant's Request for Instruction No. 19:

You are instructed that the Government has the burden of proving that a quorum of the House Committee on Education and Labor was present at the time of the administration of the oath to the defendant Christoffel and at the times that it is alleged that the defendant testified falsely.

THE COURT: Number 19 is denied.

Defendant's Request for Instruction No. 20.

It is not enough for the Government to prove beyond a reasonable doubt that a quorum existed at some point during the afternoon. It is necessary for the Government to prove beyond a reasonable doubt that a quorum existed at the time the oath was administered to the defendant Christoffel and at the times when he allegedly gave the perjurious testimony. In order for the quorum to be present it is necessary that 13 members must actually physically be present.

THE COURT: Number 20 is denied.

• • • • •

1082 Defendant's Request for Instruction No. 28.

I instruct you that if you believe from the evidence that any witness who has testified for the Government or for the defendant in this case has willfully and knowingly sworn falsely to any material fact then you

may if you think proper reject entirely the testimony of such witness or you may give such weight to the testimony of such witness in other parts as you may deem it entitled to have. For you are the sole judges of the credibility and trustworthiness of the witnesses, and the value and weight to be given to their testimony.

THE COURT: Number 28 is granted.

Defendant's Request for Instruction No. 29.

I charge you that if you find that any of the witnesses for the Government have given similar testimony other cases or have made similar accusations on other occasions that you are to take this into consideration in determining the credibility, truthfulness and trustworthiness of such witness.

THE COURT: Number 29 is denied.

1084 Defendant's Request for Instruction No. 32.

You are to remember in considering your verdict that you are to base it solely upon the evidence in this case and that statements made by the Government attorney or by the defense attorney are not evidence in this case.

THE COURT: Number 32 is granted.

Defendant's Request for Instruction No. 33.

You are to arrive at your verdict in this case without prejudice and passion and solely on the basis of the evidence presented before you and on the law as this Court has instructed you and on nothing else.

THE COURT: Number 33 is granted.

Defendant's Request for Instruction No. 34.

You are to give the defendant in arriving at your verdict that fair and impartial consideration which he is entitled to under our Constitution and law as an American citizen.

THE COURT: Number 34 is granted.

Defendant's Request for Instruction No. 35.

You are to reach a separate verdict as to each and every count of the indictment and you are not to consider evidence based on one count in connection with any other count.

THE COURT: Number 35 is granted up until the words "and you are not to consider evidence based on one count in connection with any other count." That is stricken, that language.

Defendant's Request for Instruction No. 36.

You are further instructed that it will require the concurrence of all of you to render a verdict in this case and that you must not arrive at your verdict by lot or by any manner of chance.

THE COURT: Number 36 is granted.

Defendant's Request for Instruction No. 37.

You are instructed that if after considering all the evidence you conclude that the evidence is as consistent with innocence as with guilt then you must find the defendant not guilty.

THE COURT: Number 37 is granted but in the Court's own language. Number 37 will be granted but in the Court's own language.

1087 THE COURT: Number 41 is granted.

Defendant's Request for Instruction No. 42.

You are to render your verdict completely without prejudice, passion, bias or fear and solely on the basis of the facts as you find them to exist in this case.

THE COURT: Number 42 is granted.

1092 Well, I will change that language but I will grant 24, 25, and 26, in substance.

MR. ROGGE: May we redraft it for you overnight, Judge?

THE COURT: If you two can get together on it, it might be helpful. I think Mr. Pratt and Mr. Patton un-



derstand the point. If you could do that, it would be better.

MR. PRATT: There is no disagreement at all.

THE COURT: Suppose you get together on them and prepare them.

I think I should tell you, gentlemen, the view that the Court has with reference to these instructions.  
1093 Some of them I cover as you have given them and some I will change.

I take the view that the Committee had the power to summon witnesses, to conduct a hearing, and that is a matter of law because it was a committee of investigation. I will instruct the jury as to a competent tribunal, and the oath that must be administered by the tribunal, and the question of the quorum; the appearance of the defendant before the Committee, and the question of the falsity of the defendant's answers, which the Government contends, and to the amount or degree of proof in a perjury case, which is much greater than in the ordinary criminal case; that in the early days it had to be by two or more credible witnesses, which was modified to the witness and other corroborating circumstances, which will be explained to the jury. I will instruct them as to the meaning of the word wilful in the statute and instruct them as to the evidence presented by the defendant of reputation in the community in which he lives, that while it is not proof of innocence, it may be sufficient to create a reasonable doubt as to the defendant's guilt, and that without that evidence other evidence would be convincing.  
I think probably the important highlights in the charge are covered with reference to the power of the Committee, and the quorum, and the oath, the explanation of perjury, and the falsity, and the degree or the weight and sufficiency of the evidence to sustain a conviction of  
1094 perjury, and the prayers which I have granted for the defendant. If between now and tomorrow morn-

ing you can get together and redraft 24, 25, and 26, it will be helpful. It will be most helpful.

1097 (Mr. Pratt and Mr. Fabricant approached the Bench, and the following occurred, out of the hearing of the jury:)

MR. FABRICANT: With respect to Instructions 24, 25 and 26, which Your Honor passed yesterday, I have drafted Instruction 24 as an alternate which I have shown to Government counsel, and with which they agree.

THE COURT: Very well.

MR. FABRICANT: I have not drafted alternate Instructions 25 and 26, but will use exactly the same language and just substitute the—

THE COURT: Is that it?

MR. FABRICANT: Substitute the first two lines.

THE COURT: Yes, that is all right, I think. The other would be advocated—whatever the language is in the various counts?

MR. FABRICANT: Yes.

THE COURT: Very well.

MR. FABRICANT: May I have just one copy of it? And is there any need to read it into the record?

THE COURT: No, she will have it in the record when I read it to the jury.

MR. FABRICANT: All right.

(Counsel returned to the trial table, and the following occurred:)

1176 MR. ROGGE: May counsel approach the bench?

THE COURT: Yes.

(Thereupon, counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

MR. ROGGE: I don't think it is necessary under the rules but I would like to have the record show I have

renewed my motion for acquittal at the conclusion of the case.

THE COURT: Yes, the record will so show.

MR. ROGGE: And I take it Your Honor's ruling is the same?

THE COURT: Yes.

1195

*Charge to the Jury*

THE COURT (Curran, J.): Ladies and gentlemen of the jury, the defendant in this case, Harold Roland Christoffel, is charged in an indictment containing six counts, the first of which charges that on March 1, 1947, and prior and subsequent thereto, the Committee on Education and Labor of the House of Representatives of the Eightieth Congress of the United States was duly and regularly organized and existing and in the performance of its powers and functions as defined by the Legislative Reorganization Act of 1946. The Honorable Fred A. Hartley, Jr.; a Member of Congress from the State of New Jersey, was duly elected, qualified and Acting Chairman of said Committee. In furtherance of its powers and functions and in pursuance of the authority granted to it by Resolution No. 111 of said House of Representatives, adopted and agreed to on February 26, 1947, the said Committee on said March 1, 1947, and prior and subsequent thereto, was conducting hearings and taking sworn testimony in the City of Washington, District of Columbia, to inquire into the cause of labor disputes, work stoppages and strikes and thereby was seeking to learn not only the causes of those disputes, work stoppages and strikes, but the methods of procedures followed by those who engaged in those activities, the purposes they had in mind and their connection or lack of connection with organizations, associations, or groups which were or might be engaged in subversive activities, the determination of said questions being necessary in aiding the said

1196

Committee to frame such remedial legislation, for submission to said House of Representatives, as the facts disclosed by said hearings might make appropriate.

In connection with and as a part of said hearings, and particularly inquiring whether organizations, associations or groups engaged in or committed to subversive activities were exercising or attempting to exercise control of labor unions for the purpose of fomenting such labor disputes, work stoppages and strikes, it became and was material to said inquiry and to said hearings to take sworn testimony relating to the activities and control of a certain labor union in the City of Milwaukee, Wisconsin, and its suburbs and nearby towns, known as Allis-Chalmers Workers Union-Local 248, UAW-CIO, hereinafter referred to as Local 248, and relating also to the activities and control of the Milwaukee County Industrial Union Council of the Congress of Industrial Organizations, which latter organization was then and had theretofore been a council including all or many of the labor unions in Milwaukee County, Wisconsin, which were members of and affiliated with the said Congress of Industrial Organizations; and it was and became further material to said inquiry and to

said hearings to inquire whether said Local 248 and

1197 said Milwaukee County Industrial Union Council,

or either of them, was then or had been controlled

and dominated by members of the Communist Party, the

Communist Political Association or by persons following

the Community Party line, or by persons known and designated

as "fellow travelers" with communists, or by any

other persons committed to or connected with the communist

doctrines, purposes and activities. In this same connection

it became and was further material to said hearings

and inquiry by said Committee to determine whether the

defendant Harold Roland Christoffel, who for many years

was an important officer of and as such was in a dominating

position with said Local 248, and of said Milwaukee

County Industrial Union Council, was a member of the



Communist Party, of the Communist Political Association, had worked with and participated in the activities of said communist organizations, and knew, consulted and was associated with certain publicly known and admitted members and officers of the Communist Party in connection with the activities of the Communist Party, to-wit, one Fred Blair, then the head of said Party in the State of Wisconsin, and one Ned Sparks, previously the head of said Party in the State of Wisconsin, during the period of time when said defendant Harold Roland Christoffel was such an officer of said Local 248 and of said Milwaukee County Industrial Union Council.

On the 1st of March, 1947, the defendant Harold 1198 Roland Christoffel appeared before the said Committee on Education and Labor, at the City of Washington in the District of Columbia, as a witness in a hearing in which a law of the United States authorized an oath to be administered, and took an oath before the Honorable Fred A. Hartley, Jr., the Chairman of said Committee, then and there acting as such, and then and there as such Chairman being competent under the laws of the United States to administer such oath to the defendant, that he would testify truly in the matters then being inquired of by said Committee, then and there did unlawfully, wilfully and contrary to such oath state a material matter which he did not believe to be true and which was in fact false, that is to say he, the said defendant, did then and there wilfully, falsely, and under his said oath, make the following statement, to wit, that he was not then and never was a member of the Communist Party.

And the grand jury says that, in truth and in fact, the said defendant Harold Roland Christoffel, at the time he so testified before said Committee, was then a member of the Communist Party and had been such member for several years prior thereto.

The second count alleges that he falsely testified under



oath that he was never a member of the Communist Political Association and alleges that in fact he was.

The third count alleges that he falsely testified 1199 that he had never worked with the Communist Party or with the Communist Political Association, when, in fact, the Government alleges he had.

And Count IV alleges that he testified falsely when he said he had never participated in the activities of the Communist Party, when the Government charges in fact that he had participated in the activities of the Communist Party.

And the fifth count alleges that he testified falsely when he testified that he had not supported the communists or endorsed communism when, in fact, the indictment alleges that he had so supported the communists and communism.

And in the sixth count the indictment alleges he testified falsely when he denied before the Committee that he knew Ned Sparks and Fred Blair, when the indictment alleges, in fact, that he knew both of these men.

There are six counts of perjury.

First, I should like to tell you that the indictment in this case, this paper writing that contains the charges is not evidence, and the fact that the grand jury did return an indictment is not to be considered by you as evidence at all.

The indictment is but an accusation, the medium by which the defendant is brought into court for trial, and for the first time has the opportunity to offer testimony 1200 on his own behalf, so you are not to consider that as indicating the guilt of the defendant in any way whatsoever.

The defendant in a criminal case is presumed to be innocent and that presumption attends him at the outset of the trial and remains with him throughout the trial and prevails until and unless, in your final deliberations, you feel that the presumption is overcome by proof adduced by the Government which convinces you beyond a reasonable doubt of the defendant's guilt.

The burden, therefore, is upon the Government to establish his guilt beyond a reasonable doubt.

The term reasonable doubt means a doubt based upon reason, arising out of evidence or lack of evidence in the case. It is such a doubt as after a full and fair consideration of all the evidence will leave a juror's mind so undecided that he does not have an abiding conviction of the defendant's guilt, that is, a settled conviction of guilt which he believes will remain unshaken by further thought and reflection. It is such a doubt as would cause an ordinarily prudent person to hesitate and pause through feelings of uncertainty if confronted with a question of importance concerning his own affairs. Reasonable doubt does not arise from mere conjecture, whim, or caprice, or from reluctance to convict through feelings of sympathy or mercy. It is a conscientious belief arising after 1201 calm dispassionate and impartial consideration of the evidence that there is reason to doubt the defendant's guilt.

Now this requirement does not imply proving beyond all doubt. Happenings between human beings cannot usually be proven to an absolute certainty and hence the law does not require it. All that the law requires is proof to a moral certainty. In other words, as a fair shield of protection it does not provide that one accused of crime should suffer the loss of his good name, his liberty or his life unless proven guilty beyond a reasonable doubt. And so if, after careful examination of all the evidence in this case, you have a reasonable doubt as to the defendant's guilt, you must resolve that doubt in his favor and return a verdict of not guilty.

There is another rule of law to which I should call your attention, and that is if upon the whole evidence in this case, there is a reasonable hypothesis or theory consistent with innocence, it is your duty to find the defendant not guilty, that is to say, if, from the evidence, not from conjecture or impression as you may have obtained it without

the courtroom, but from the evidence as you have heard it from the witness stand, there may be two theories equally consistent with guilt on the one hand or innocence on the other, you must take the one most favorable to the defendant and if this be done, your verdict should be not guilty.

In judging the evidence you must evaluate the 1202 testimony of individual witnesses. Only thus can you determine the truth, and it is the truth you seek. It is for you to decide the weight you will give the evidence and in this respect the Court can be of no assistance to you whatsoever. You should weigh carefully every fact and every circumstance that has been submitted to you for your consideration. Bring to this task your knowledge of human nature, your ability to judge of men, their source of knowledge, their intelligence, their motives, their intentions, as you may discern the real character by the spoken word and measure their weight of truth and accuracy.

You may and you should, of course, take into consideration the manner and demeanor, the attitude and the conduct of the witnesses as they appeared before you in order to determine whether their testimony was straightforward or evasive. Interest in those things involved within the controversy or its result, friendship or animosity towards persons concerned therein, and many other human factors may or may not affect the desire and the capability of a witness to tell the truth, depending largely upon his innate honesty.

Give to the testimony of each witness that weight and only that weight to which you believe it is entitled when tested by these considerations and when considered in connection with all of the other evidence in the case.

You may take into consideration the apparent 1203 bias or interest that any witness may have in the outcome of the trial and the intrinsic probability or improbability of the testimony as told by the witnesses

and its harmony or incongruity with other facts in the case which you may find to be established beyond a reasonable doubt.

For the purpose of this case perjury is defined by the Code of Laws of the District of Columbia, Title 22, Section 2501 which provides that:

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify truly, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true shall be guilty of perjury.

In other words, ladies and gentlemen, it merely means that perjury is the wilful giving of false testimony as to any material matter before a competent tribunal under oath.

You are instructed that the elements of the offense of perjury are:

1. The taking of an oath before a competent tribunal.
2. That the oath was authorized in a case in which the law of the United States authorized the administering of an oath.
3. That the defendant was sworn to testify truth-  
1204 fully and that notwithstanding this oath he did wil-  
fully and contrary to such oath testify falsely re-  
garding a material matter which he did not then believe  
to be true.

I want to instruct you on three things that I give you as matters of law.

And so I instruct you as a matter of law that the Committee on Education and Labor of the House of Representatives had the power to investigate the causes of labor disputes.

You are also instructed that the hearings before the Committee on Education and Labor of the House of Representatives which were referred to in the present trial



and in which it is alleged the false testimony was taken was as a matter of law a hearing in which the law of the United States authorized the administering of an oath.

And in that connection you are further instructed as a matter of law that the Chairman, Congressman Fred A. Hartley, Jr., had the lawful power and authority to administer an oath.

You are further instructed that if you believe beyond a reasonable doubt that the Committee on Education and Labor of the House of Representatives was on March 1, 1947, and prior thereto conducting hearings and taking sworn testimony in Washington, D. C., to inquire into the causes of labor disputes and methods of procedures followed by those who engaged in those activities; the purposes they had in mind and their connection or lack of connection with organizations, associations, or groups which were or might be engaged in subversive activities, or if you believe beyond a reasonable doubt that in connection with and as a part of the said hearings and particularly inquiring into whether organizations, associations, or groups engaged in or committed to subversive activities, were exercising or attempting to exercise control of labor unions for the purpose of fomenting such labor disputes, I instruct you that it became and was material to the said hearings and inquiry by the Committee to determine whether the defendant Harold Roland Christoffel, who for many years was an officer of Local 248 and of the said Milwaukee County Industrial Union Council, whether he was a member of the Communist Party, or the Communist Political Association, whether he had worked with and participated in the activities of communistic organizations, and knew and also associated with certain publicly known and admitted members and officers of the Communist Party in connection with activities of the Communist Party, to wit, Fred Blair or Ned Sparks.

So, I therefore instruct you as a matter of law that the questions propounded by the Committee which are the



subject matter of the six counts in the indictment were material to the inquiry before the Committee.

1206 The defendant has requested certain instructions which I have allowed, and some of which I have already given.

You are instructed to acquit the defendant Christoffel unless you find beyond a reasonable doubt that each and every one of the following five matters was proven by the Government:

1. That the testimony given was under oath.
2. That the oath was administered and the testimony taken by a body authorized by law to do so.
3. That the testimony was material.
4. That the testimony was false.
5. That the testimony was wilfully false.

As applied to this case you must therefore return a verdict of not guilty as to this defendant on each of the counts of the indictment, unless you find as to each count and beyond a reasonable doubt that the following facts existed.

1. That the House Committee on Education and Labor before whom this defendant is alleged to have appeared had the lawful power and authority to make the investigation it was conducting, and I have instructed you that it had.

2. That the defendant Christoffel appeared before a quorum of at least thirteen members of the said Committee, and I will refer to that a little later on.

3. That the defendant Christoffel thereupon took  
1207 an oath administered to him by a person having the lawful power and authority to administer the oath, and I have instructed you that the Chairman did have the lawful authority to administer the oath, and of course it is within your province to decide whether the oath was in fact administered.

4. That the defendant Christoffel uttered before the Committee the statements attributed to him in each count of the indictment.

5. That the said statements were in fact and in reality false and untrue.

6. That the defendant Harold Christoffel wilfully made these false statements knowing full well that these statements were false and untrue and not in accordance with the facts of the matter.

You are instructed that a majority of the House Committee on Education and Labor is thirteen in number, and at least that number must have been actually and physically present before you may find a quorum to be in existence, that is, they must have been present at the beginning of the afternoon session on March 1, 1947.

And in this connection I wish to instruct you that the first thing that must be proved in this case is that the defendant was sworn to testify before a competent tribunal. If the tribunal before which he testified was not a competent tribunal, he cannot be convicted of perjury.

1208 The indictment alleges that the defendant testified before a meeting of the Committee on Education and Labor of the House of Representatives. To constitute a meeting of the Committee there must be present a majority of the Committee, and by present I mean actually physically present. In this case the Committee being composed of 25, before you could have a meeting of that Committee there must have been physically present at least 13 members of that Committee in the committee room. If such a Committee so met, that is, if 13 members did meet at the beginning of the afternoon session of March 1, 1947, and thereafter during the progress of the hearing some of them left temporarily or otherwise and no question was raised as to the lack of a quorum, then the fact that the majority did not remain there would not affect, for the purposes of this case, the existence of that Committee as a competent tribunal provided that before the oath was administered and before the testimony of the defendant was given there were present as many as 13 members of that Committee at the beginning of the aft-

ernoon session. If you find that 13 members were not present at the beginning of the afternoon session on March 1, 1947, or have a reasonable doubt that they were, then of course you need go no further, because there would not be a competent tribunal in this case before which the testimony was given and your verdict should be not guilty.

1209 I instruct that the alleged falsity of each of the statements made must be known to the defendant Christoffel at the time he testified before the House Committee on Education and Labor and you must find that he testified to the same wilfully and that he could not have made a false statement wilfully unless he purposely made the same with the knowledge of its falsity at the time he uttered the statement.

I also instruct you that a false statement purposefully made cannot be said to have been wilfully made if it was made by or through surprise, mistake or inadvertence, or if the defendant made the false statement through forgetfulness or through a poor or mistaken recollection of the facts.

I further charge you that in considering Count III and whether the defendant ever worked with the Communist Party or with the Communist Political Association, that to find the defendant guilty with respect thereto you must find more than that the defendant on some occasions took the same view and sought some of the same objectives as those taken and sought by the Communist Party or the Communist Political Association. To find the defendant guilty you must be able, first, to find beyond a reasonable doubt that the defendant worked with the Communist party or the Communist Political Association primarily to advance the objectives and aims of those groups,  
1210 rather than the objectives and aims of the labor union.

I further instruct you that in considering Count IV and whether the defendant ever participated in the activities

of the Communist Party or the Communist Political Association that to find the defendant guilty with respect thereto you must find more than that the defendant on some occasions took the same view and sought some of the same objectives as those taken and sought by the Communist Party or the Communist Political Association. To find the defendant guilty you must be able first to find beyond a reasonable doubt that the defendant participated in the activities of the Communist Party or the Communist Political Association primarily, of course, to advance the objects and aims of those groups, rather than the objectives and aims of the labor union.

And I further charge you that in considering Count V and whether the defendant ever supported the communists and endorsed communism that to find the defendant guilty with respect thereto you must find more than that the defendant on some occasions took the same view and sought some of the same objectives as those taken, or supported or endorsed the same objectives as the Communist Party. To find the defendant guilty you must be able to find beyond a reasonable doubt that the defendant supported the communists and endorsed communism primarily to support it and endorse it as communism, rather than to do something which aided the labor union.

The Government has introduced evidence pertaining to the existence of organizations allegedly communistic and I charge in this respect that you must disregard this evidence with respect to the charges contained in Counts III, IV, and V of the indictment unless you find beyond a reasonable doubt that the said organizations were in fact organized and created by the Communist Party or the Communist Political Association, and unless you find beyond a reasonable doubt, in addition, that the defendant Christoffel knew that said organizations were organized and created by the Communist Party or the Communist Political Association.

I instruct you that if you believe from the evidence that

any witness who has testified for the Government or for the defendant in this case wilfully and knowingly swore falsely to a material fact about which the witness could not reasonably have been mistaken, then you can, if you think proper, reject entirely the testimony of such witness, or you may give such weight to the testimony of such witness in other parts as you deem it entitled to have, for you are the sole judges of the credibility and trustworthiness of the witnesses, and the value and weight to be given to their testimony.

I further instruct you since this is a perjury prosecution, the Government, as to each count, must establish the falsity of the statement alleged to have been made by the defendant Christoffel under oath by the testimony of two independent witnesses or one witness and corroborating circumstances. Corroborating evidence is sufficient only when the evidence, if true, substantiates the testimony of a single witness who has sworn to the falsity of the alleged perjurious statement and that the corroborative evidence is trustworthy.

You must determine for yourself the credibility and trustworthiness of the corroborating testimony and you must be convinced of its truth beyond a reasonable doubt. This corroborating testimony must be of strong character and not merely corroboration of slight particulars. Unless all these conditions have been satisfied, of course you must return a verdict of not guilty.

You know the law in its wisdom, ladies and gentlemen, says that one accused of perjury cannot be convicted upon the oath of a single person, that is, one oath against another oath is not sufficient. In other criminal cases it is purely a question of quality and not quantity, and the number of witnesses is immaterial, that is to say, it is the quality, the weight, the value that you members of the jury give to the testimony. However, in a perjury case the law says that there must be proof of the falsity of the statements which the defendant is alleged to have



1213 made and that the proof must be satisfied by either, one, two credible witnesses who gave direct evidence to the fact, or, two, one credible witness and other corroborative circumstances.

The credible witness who is meant and referred to by that statement in the law means a witness who can testify personally and directly as to the facts as to which the defendant is alleged to have testified falsely.

You are also instructed to remember in considering your verdict that you are to pass solely upon the evidence in this case and that statements made by the Government counsel or by the defense attorney are not evidence in this case at all.

You are to arrive at your verdict in this case without prejudice and bias and solely on the basis of the evidence presented before you and the law as the Court has instructed you, and nothing else.

You are to give the defendant in arriving at your verdict that fair and impartial consideration which he is entitled to under the Constitution and laws of the United States as an American citizen.

You are to reach a separate verdict as to each and every count of the indictment.

You are further instructed that it will require the concurrence of all of you to render a verdict in this case, and that you must not arrive at your verdict by lot or by any manner of chance.

1214 In rendering your verdict without prejudice you are not to allow yourselves to be influenced by the fact that the defendant in this particular trial may have been shown to have had different political, social or economic views than any of you.

Nor, in rendering your verdict, are you to allow yourselves to be influenced by the fact that this defendant may have been shown in this trial to be an ardent union leader.

Nor, in rendering your verdict are you to allow your-

selves to be influenced by the fact that ~~it~~ may have been shown in this trial that the defendant took an active part in strikes which his union conducted against the Allis-Chalmers Company.

You are not to allow yourselves to be influenced by the fact that the defendant may have taken part in picket lines in the course of those strikes.

You are to render your verdict completely without prejudice, passion, bias or fear and solely on the basis of the facts as you find them to exist in this case.

Further, ladies, and gentlemen, a defendant in a criminal case may call witnesses to the stand to show that his character was such as to make it unlikely that he would be guilty of the crime charged. — The defendant in this case has presented witnesses to testify as to his character.

You are therefore instructed that an established reputation for good character may alone create a reasonable doubt although without it the other evidence would be convincing as to his guilt. Of course it is not proof of innocence although it may be sufficient to raise a reasonable doubt as to the defendant's guilt.

In the language in the statute is the word "wilful," that the defendant wilfully testified falsely, and the Court instructs you that the word "wilful" means deliberate or with a purpose. It doesn't mean corruptly or with an evil intent. It merely means that it was deliberate and intentional, that is, the answers that he gave to the Committee which are alleged to be false, ~~he~~ did so deliberately and intentionally and it was not a mere inadvertence or an accident.

In the sixth count of the indictment the word "know" is used, that the defendant is alleged to have known Ned Sparks and Fred Blair, and that he testified falsely under oath before the Committee that he did not, and that word merely means to recognize or to discern, to recognize as distinct from something else, to distinguish. It doesn't mean that the defendant had to be familiar or intimately

associated with Ned Sparks or Fred Blair. It means that he knew who they were.

To summarize briefly, ladies and gentlemen of the jury, the issue is clear in this case, and that is whether 1216 or not the defendant on the occasion of March 1, before a competent tribunal testified falsely, that is, he wilfully testified falsely concerning matters which were untrue.

1. That the Committee on Education and Labor, I say to you, had the power to investigate and make inquiry into the questions of labor disputes.

2. If you are satisfied beyond a reasonable doubt that at the beginning of the afternoon session of March 1, 1947, there was a quorum present, that 13 members of that Committee were there, then that is a duly, legally constituted body.

3. That the Chairman of that Committee, Fred Hartley, at that time had the power to administer the oath.

4. That the questions asked of this defendant were material to the issues, and

5. It is for you to decide the truth or falsity of the statements that the defendant made before that Committee on March 1, 1947.

The Government contends that in this case they were false, and has produced witnesses tending to show that they were false.

So that if you believe and believe beyond a reasonable doubt that at the time and place in question, that is, within the District of Columbia on March 1, 1947, that the defendant appeared before the Committee on Education and Labor, that you are satisfied it was a duly 1217 competent tribunal as the Court has defined what a duly competent tribunal is, and that he then and there wilfully testified as to these six questions falsely, when he knew, as a matter of fact, what he was saying was false, then it is your duty under the law to return a verdict of guilty on all six counts.

• The defense contends that he did not answer falsely, that he told the truth, and brought witnesses to the witness stand to testify that in all the years they knew the defendant that they never knew him as a communist, nor did he advocate the principles of communism. Of course, if you believe he was not a communist, or he was not a member of the Communist Political Association or worked with the communists or participated in their activities, or advocated communism, or that he didn't know Sparks or Blair, then of course it is your duty under the law to return a verdict of not guilty on all counts.

You may return a verdict of guilty on the six counts, or you may return a verdict of guilty as to the first count and not guilty as to the other counts.

You may return a verdict of guilty as to the first and second counts, and not guilty as to the others.

Or, you may return a verdict of guilty as to the first, second, and third counts, and not guilty as to the fourth, fifth, and sixth.

And you may return verdicts of guilty on counts 1218 one, two, three, and four, and not guilty on five and six.

You may return verdicts of guilty on one, two, three, four and five, and not guilty as to six, whichever you decide it tends to show beyond a reasonable doubt.

You have heard the witnesses as they have testified, and of course you should weigh carefully every fact and every circumstance that has been submitted to you for your consideration.

Approach it with the same good, logical common sense as you would approach your own personal affairs in solving this problem.

Weigh the evidence, sift the evidence. You are the finders of fact. You are the ones to separate the testimony that you believe and the testimony that you disbelieve.

When you reach your jury room, you will select a fore-

man; and when you have reached your verdict, you notify the marshal.

Is there anything else?

MR. ROGGE: May we come to the bench?

(Thereupon, counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

MR. ROGGE: If Your Honor please, the rules require me to call these to Your Honor's attention, specifically, as you know.

1219 The first item, your Honor charged that the District of Columbia perjury statute applied; whereas, I think it is the general Federal statute that applies.

Number two, Your Honor ruled as a matter of law that the questions which were asked Mr. Christoffel on the subject matter were material. I object to that.

The third one, on the quorum Your Honor instructed it was sufficient if there was a quorum there at the beginning of the session.

THE COURT: That is right.

MR. ROGGE: I wish to object to that and instead request Your Honor—I am doing this because the rules require it, to have given our instructions 16 to 20, inclusive, which read a quorum there when he testified.

Fourth, that Your Honor instructed that the word know meant simply to recognize or discern, and rather, request that Your Honor should have given our instruction 23 in the language of the indictment which said that know meant to know intimately.

I think I should also raise a fifth item, in view of the fact there has been so much discussion about the word wilful.

I know it was involved in the Fields case, and certiorari was denied. Your Honor has followed the Fields case. There has been a discussion about wilful, 1220 there is a different definition of it in one of the Supreme Court cases involving income tax, but I



don't remember—the Murdock case. Your Honor followed the Fields case, rather than the Murdock case.

I make those five objections.

(Thereupon, at 3:05 o'clock p. m., the jury retired to consider of their verdict.)

1221

*The Verdict of the Jury*

(At 7:57 the Jury returned to the court room.)

THE DEPUTY CLERK: Mr. Foreman has the jury agreed upon a verdict?

THE FOREMAN: We have, sir.

THE DEPUTY CLERK: What say you as to the defendant Harold Roland Christoffel on the first count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: On the second count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: On the third count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: On the fourth count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: On the fifth count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: On the sixth count of the indictment?

THE FOREMAN: Guilty.

THE DEPUTY CLERK: Members of the Jury, your Foreman says you find the defendant guilty as indicted, and this is your verdict, so say you each and all?

(Jurors indicated in the affirmative.)

MR. ROGGE: Does that constitute a polling of the Jury?

The defendant requests the polling of the jury as to each count, if your Honor please.

1228 MR. ROGGE: I shall wish to renew the motion for an acquittal: I understand I have five days for that, and also a motion for a new trial.

THE COURT: Yes, sir, you may have the time to file that motion that you are entitled to; Mr. Rogge.

The defendant may be committed.

MR. ROGGE: May I be heard on the matter of bail?

THE COURT: You may apply to the Court of Appeals.

(Whereupon, at 8:10 p. m. the hearing in the above matter was concluded.)

1229 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

In the Matter of

UNITED STATES OF AMERICA

vs.

HAROLD ROLAND CHRISTOFFEL

*Defendant*

Criminal No. 791-47

Washington, D. C.

Friday, March 5, 1948

The above-entitled matter came on for argument before the HONORABLE EDWARD M. CURRAN, Associate Justice.

APPEARANCES:

On behalf of the United States of America:

JOHN S. PRATT, Esq., and

FRANK H. PATTON, Esq., Special Assistants to the  
Attorney General

On behalf of the Defendant:

O. JOHN ROGGE, Esq.,

HERBERT J. FABRICANT, Esq., 1700 Eye St., N. W.  
Washington, D. C.

and

DANIEL I. SOBÉL, Esq., 536 N. Wise Avenue,  
Milwaukee, Wisconsin

1230

*Proceedings*

THE COURT: I want to say first I will consider nothing that happened in advance of this trial. You may argue on errors allegedly committed during the course of the trial.

MR. ROGGE: Well, I wanted to say to Your Honor that I am not going to burden Your Honor with argument, although there are enumerated in here propositions that I think we have fully covered, so although we have listed as the first one here the failure to allege a quorum; and that, again, is also covered in the errors committed on trial, as we allege, and Your Honor has ruled on it, I shan't argue it at any great length before Your Honor.

The next one that we raise, and I am likewise not going to argue that at any great length, other than referring to it, I think it should be held improper for the Government to have F. B. I. investigations of the jury panel.

There was one in this case, Mr. Pratt had the notes. I asked for a copy of them, which the Court denied, and I then made it the basis for a motion to disqualify the panel, and Your Honor denied that.

No matter if the Government may say a F. B. I. investigation of a panel is done very quietly, such an investigation can not help in one way or another to get back to some members of that panel, and as a consequence I submit, they feel under pressure, inquiries are made,  
1231 it gets back to them in some way, somebody asking about them, and I don't think it is what is contemplated in the idea of a trial by one's peers.

My understanding is you pick your group by chance,

and we each have the same amount of information, and from that we pick the jury.

1232 I want to go now to No. 15, on which I do want to spend a little time.

THE COURT: I don't care to hear you.

MR. ROGGE: That was in Your Honor's charge.

THE COURT: I understand that. I don't care to hear anything about that, because the indictment has been returned; it was labelled the District of Columbia Code, and I don't care to hear it.

MR. ROGGE: Well, then, I won't press it, except may I point out this? When I urged that point before Mr. Justice McGuire he says you can't raise it on the face of the indictment, but this is something you argue at the time of sentence.

That was the only other one, if the Court please, that I wanted to argue at length.

There are certain others that we have set out.

1245 THE COURT: Count 2 has disturbed me, and I will grant the motion, the motion of acquittal on Count 2.

The motion for a judgment of acquittal on the other counts is denied, and the motion for a new trial is  
1246 denied, and the request for bail is denied, so I take it you would prefer to have the defendant sentenced now, Mr. Rogge?

MR. ROGGE: Yes, if Your Honor please.

THE COURT: Let him stand. Do you want to say anything, Mr. Christoffel, before the Court imposes sentence?

THE DEFENDANT: No, sir.

THE COURT: In view of the fact that these remaining five questions were asked of the defendant at approxi-

mately one and the same time, the Court will impose a sentence on the indictment and not on the individual counts.

And the Court sentences you to serve a term in the penitentiary designated by the Attorney General or his duly authorized representative of not less than two nor more than six years.

MR. ROGGE: My associate suggests I should now renew my application for bail.

THE COURT: That will be denied, and now your way is clear to appeal to the Court of Appeals.

# UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

HAROLD ROLAND CHRISTOFFEL,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

April Term, 1948

No. 9788

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties herein that the following additional portions of the record not previously marked by counsel shall also be omitted in printing the Joint Appendix:

All portions of the typewritten record and all exhibits relating to the question of whether or not the testimony given before the Congressional Committee was false and perjurious, such portions to be mutually agreed upon by the attorneys for the appellant and the attorneys for the appellee.

It is understood that the attorneys for the appellant enter into this stipulation in view of the rule of the Court of Appeals against printing unnecessary portions of the record and in view of the rule of law that when there exists



in the record substantial evidence which, if believed by the jury, would indicate that the testimony given was false or perjurious, the Appellate Court will not reverse the conviction on those grounds even if there is countervailing evidence in the record.

It is further understood that the following constitute all the points which will be made and argued by the appellant on appeal:

1. The indictment is fatally defective in that it is drawn under Section 22-2501 of the District of Columbia Criminal Code, whereas the allegations of the indictment reveal that the defendant testified before a Federal body, to wit: the Committee on Education and Labor of the House of Representatives of the 80th Congress of the United States, and that said testimony was given with respect to matters pertaining to the Federal Government and not with respect to matters affecting the local government of the District of Columbia.

2. The indictment is fatally defective for the reason that it appears upon the face of the said indictment that the oath was administered by the Chairman of the Committee on Education and Labor of the House of Representatives of the 80th Congress of the United States, and said Chairman is not an officer authorized to administer the oath under the terms and provisions of the District of Columbia Code.

3. The District Court was in error in refusing to grant the motion to dismiss the indictment and the motion for a new trial in that the indictment failed to state facts sufficient to constitute an offense against the United States since the indictment failed to state that a quorum of the Committee on Education and Labor of the House of Representatives of the 80th Congress of the United States was present at the time that the alleged perjury was committed.

4. The District Court erred in ruling and instructing the jury that it was immaterial how many members of the Committee on Education and Labor were present at the

time the oath was administered to the defendant and/or at the time that the defendant presented his testimony as long as a quorum of the said Committee was present at the opening of the afternoon session of the said Committee on March 1, 1947.

5. The District Court erred in denying the motion for a mistrial based on the unrebutted charge that the jury panel in this case has been investigated on behalf of the Government by the Federal Bureau of Investigation.

dated: New York, N. Y.

June 18, 1948

ROBERT H. GOLDMAN

Attorneys for Appellant

JOHN S. PRATT

Attorneys for Appellee

# United States Court of Appeals

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

No. 9788

HAROLD ROLAND CHRISTOFFEL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the District of Columbia (now United States District Court for the District of Columbia)

Argued October 18, 1948

Decided November 22, 1948

*Mr. O. John Rogge* for appellant. *Mr. John F. Davis* also entered an appearance for appellant.

*Messrs. John S. Pratt*, Special Assistant to the Attorney General and a member of the Bar of the Supreme Court of Ohio, *pro hac vice*, by special leave of Court, and *James W. Knapp*, Attorney, Department of Justice, with whom *Mr. George Morris Fay*, United States Attorney was on the brief, for appellee. *Messrs. Sidney S. Sachs* and *John D. Lane*, Assistant United States Attorneys, also entered appearances for appellee.

Before EDGERTON, CLARK, and PRETTYMAN, JJ.

EDGERTON, J.: Appellant has been convicted of perjury as a witness before the Committee on Education and Labor of the House of Representatives. The sufficiency of the evidence that he gave false answers under oath is not disputed. Neither is the authority of the Committee, when sitting, to ask the questions. Appellant's chief contention is that the Committee was not sitting.

The Committee had 25 members. Under the rules of the House a majority was a quorum. The Committee's records show, and there is no dispute, that 14 members were present at the beginning of the afternoon session on March 1, 1947, during which appellant testified. Its records unaided by oral evidence do not show that less than 13 members were present, or that anyone suggested lack of a quorum, at any time that afternoon. Undisputed testimony shows that no such suggestion was made. The Chairman of the Committee testified that a quorum was present when appellant testified before the Committee.

Appellant offered evidence tending to show that a quorum was not present when he testified. Judge Curran refused to submit this question to the jury. Instead he gave the following instruction: " . . . If 13 members did meet at the beginning of the afternoon session of March 1, 1947, and thereafter during the progress of the hearing some of them left temporarily or otherwise and no question was raised as to the lack of a quorum, then the fact that the majority did not remain there would not affect, for the purposes of this case, the existence of that Committee as a competent tribunal . . . ." In the circumstances of this case we think this ruling was right and a contrary ruling would have been narrowly technical.<sup>2</sup>

An enrolled statute cannot be impeached by proof of irregularity in its enactment.<sup>3</sup> We do not suggest carrying the analogy so far as to hold that whatever purports to be the action of a congressional committee must be accepted as such. We hold only that a hearing before a regularly convened congressional committee, appearing from the committee's record to be regularly conducted, and later recognized, as this hearing was, by the committee and by the House, cannot afterwards be impeached, for the benefit of a defendant who did not at the time question its regularity, by showing that a quorum was not in fact present when he gave false testimony. So much, we think, is required by a reasonable regard for the substance of things and by the respect courts owe to Congress. It gives some protection to the public interest in discouraging perjury intended and apt to influence congressional committees, and injures no private interest except freedom of perjury.

Appellant says the indictment was drawn and the sentence imposed under the perjury statute in the District of Columbia Code, D. C. Code (1940) §22-2501. He contends that perjury before a congressional committee is punishable only under the perjury statute in the federal Criminal Code, 18 U. S. C. §231 (now §1621). Since this case was argued, this court has decided the contrary.<sup>4</sup>

At the beginning of the trial this colloquy occurred between appellant's counsel and the court:

MR. ROGGE: I notice Government counsel have an additional set of pages with reference to the jurors, which apparently contain additional information. I am asking for a copy of that so

<sup>1</sup> The record and briefs in *Meyers v. United States*, decided by this court Nov. 8, 1948, show that Judge Holtzoff made a similar ruling in that case and the point was raised on appeal. Judge Bailey made what we understand to be a similar ruling twenty years ago. *United States v. Stewart*, Dist. Court, Dist. of Columbia, Nov. 20, 1928, Crim. No. 47138; unreported. The case is referred to and the charge to the jury quoted in 6 CANNON'S PRECEDENTS, § 345.

<sup>2</sup> Even the technical argument against the ruling might be met by a technical reply. Since the members of the Committee who left, as well as those who remained, manifestly intended that the latter should have authority to continue the hearing at least until a quorum was demanded, it might be argued that the full meeting delegated this authority to a subcommittee composed of those who remained.

<sup>3</sup> *Field v. Clark*, 143 U. S. 649; *United States v. Ballin*, 144 U. S. 1.

<sup>4</sup> *Meyers v. United States*, *supra* note 1.

Presumably the local perjury statute is intended to meet local conditions. *O'Brien v. United States*, 69 App. D. C. 135, 137, 99 F. 2d 368, 370. The present sort of perjury comes nearer than most others to being local, since congressional committees usually hold their hearings in the District of Columbia.

that we may have the same benefit of the same information that the Government has.

THE COURT: That will be denied.

MR. ROGGE: I also want to make this observation, that this was raised as an objection in the Sedition Case and the Judge disqualified that panel and we started with a new panel. If it is true, as I think from the sheets that I see in the Government's possession, that they have had an F.B.I. investigation made of the jury, I raise that, if Your Honor please, as an objection to this panel and I refer to the action Chief Justice Eicher took in the Sedition Case where, as I say, he disqualified the panel, even though that had been done without any of the members of the panel knowing anything about it, he nevertheless disqualified the panel.

THE COURT: Very well. That is denied.

There is no merit in the contention that the court should have disqualified the panel or should have allowed appellant's counsel to examine the government's notes, if any, concerning it. There is no evidence, and counsel did not attempt to introduce any, that the government made any investigation, to say nothing of an improper one, of prospective jurors. Counsel's suggestion of what he thought probable is not evidence. The *Sinclair* case, 279 U. S. 749, involved offensive shadowing of jurors during a trial and is plainly not in point. And the government is not required to furnish the defense with notes it may have made for use in selecting a jury.

*Affirmed.*



[fol. 278] [Stamp:] United States Court of Appeals for  
the District of Columbia Circuit. Filed Nov. 22, 1948.  
Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT, OCTOBER TERM, 1948

No. 9788

HAROLD ROLAND CHRISTOFFEL, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the  
District of Columbia (now United States District Court  
for the District of Columbia)

Before Edgerton, Clark and Prettyman, JJ.

JUDGMENT

This cause came on to be heard on the transcript of the  
record from the District Court of the United States for the  
District of Columbia, now United States District Court for  
the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and  
adjudged by this Court that the judgment of the said  
District Court appealed from in this cause be, and the same  
is hereby, affirmed.

Per Circuit Judge Edgerton.

Dated November 22, 1948.

[fol. 279] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Nov. 29, 1948. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA  
No. 9788

HAROLD ROLAND CHRISTOFFEL, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

PETITION FOR REHEARING

To the Honorable The Chief Justice and Associate Justices of the United States Court of Appeals for the District of Columbia:

This petition is made by appellant, pursuant to Rule 26 of the General Rules of the United States Court of Appeals for the District of Columbia, for a rehearing in the above entitled case, and upon such rehearing, for a reversal of the judgment of this Court affirming the judgment of the United States District Court for the District of Columbia wherein appellant was found guilty under an indictment charging a violation of Sec. 22-2501 D. C. Crim. Code and wherein a sentence of two to six years was imposed upon said appellant (Joint Appendix \* 28).

It is respectfully submitted that a rehearing, as prayed for by appellant, should be granted for reasons which are hereinafter set forth.

[fol. 280]

I

The Decision of the Court of Appeals Appears in Part to Be Predicated upon the Hypothesis that a Witness Before a Congressional Committee Although Not Himself a Member of Congress Nevertheless Has Standing to Question the Regularity of a Congressional Committee Hearing

At page 2 of the opinion of this Court, Mr. Justice Edgerton wrote:

"We hold only that a hearing before a regularly convened Congressional committee, appearing from the

\* Hereinafter referred to as "J. A."

committee's record to be regularly conducted, and later recognized, as this hearing was, by the committee and by the House, cannot afterwards be impeached, for the benefit of *a defendant who did not at the time question its regularity*; by showing a quorum was not in fact present when he gave false testimony." (Italics added.)

Research discloses no authority in support of the proposition that a private citizen appearing as a witness before a Congressional committee has standing to question the regularity of a Congressional committee hearing. On the contrary it appears and the Government, in this case, has so argued:

"Congressional representative bodies operate under parliamentary rules *by which they themselves determine the validity of their own proceedings*. Under the parliamentary procedure of the House of Representatives the meeting of the House or of a committee thereof once duly convened may continue to transact business and consider matters before it until recess or adjournment unless the absence of a quorum is *officially noted by the chair upon the suggestion of a member rising to a point of order or as a result of an official roll call*." (Brief for Appellee, p. 16; see also Brief for Appellee, p. 16, footnotes 7 & 8) (Italics added.)

The Department of Justice has concluded that "the House of Representatives is empowered to determine the rules of its proceedings." (Brief for Appellee, p. 17.)

[fol. 281] Thus this Honorable Court, to the extent that it has predicated its holding on any standing which a private citizen has to question the regularity of Congressional action, has gone beyond and in the face of the arguments made and the authorities cited by the Government.

If a private citizen has no standing at the time of a committee hearing to question the organization or regularity of Congressional committee action it seems doubtful that he may be bound by action which was in fact irregular but which he was powerless to question.

## II

It Is Evident From an Analysis of the Opinion Herein that the Holding of this Court Was Based Upon a Misconception of a Material Issue

At page 2 of its opinion this Honorable Court has held:

“ . . . that a hearing before a regularly convened Congressional committee, . . . cannot afterwards be impeached, . . . by showing that a quorum was not in fact present . . . ”

The appellant did not, and does not now, seek a determination impeaching a hearing before a regularly convened Congressional committee. The appellant did not and does not now seek to upset the report which the House Committee submitted to the full House (House Report No. 245 received by the House April 11, 1947, see p. 3482, Daily Cong. Rec. 1st Sess. 80th Cong.) and which formed a basis for the enactment of the Taft-Hartley Law (Public Law No. 111, 80th Cong. 1st Sess. c. 120, adopted June 23, 1947).

[fol. 282] The appellant's contention is that any presumption of the regularity of Congressional action (which the appellant was unable to question at the time of the action) must fall in the face of a presumption of innocence which attends every person charged with crime at every stage of a prosecution. In other words, if the propriety of the tribunal in which perjury was alleged to have been committed cannot be established by proof apart from presumption, the indictment falls. This position is not inconsistent with the view that the appellant does not seek to set aside any report of the House Committee or the Taft-Hartley law itself. The hearings may have been sufficiently regular to support the validity of the laws and at the same time may have been sufficiently irregular so as to render proof of perjury impossible.

The argument here asserted is not narrowly technical but is, on the contrary, fundamental in our whole system of criminal jurisprudence. A lie is morally reprehensible whether under oath or otherwise. However, a lie, to be the basis of perjury, must offend the solemnity of the occasion. The occasion is technically defined and it is that technicality which distinguishes perjury from a plain lie. Thus

the slightest cancellation of the presumption of innocence raises important constitutional questions rather than technical defenses.

### III

#### This Cause Is in No Way Governed by Any Ruling in the Case of *Myers v. United States*

This Honorable Court has disposed of the contention that perjury before a Congressional committee is punishable only under the General Federal Perjury Statute by citing [fol. 283] the case of *Myers v. United States*, decided by this Court on November 8, 1948. The two cases, though they both involve perjury charges, are otherwise completely distinguishable if for no other reason than that Myers was sentenced to a term consistent with the General Federal Perjury Statute, whereas the appellant was not. Thus, no prejudice resulted from the first prosecution, whereas in the instant prosecution the opposite is true,

### IV

#### Certain Additional Errors Committed in Advance of Trial as Well as Upon the Trial Are the Basis for a Reversal Herein

Additional errors besides those argued in the Brief for Appellant were committed both in advance of trial and at trial. These errors were substantial and prejudicial. They were not argued in the Brief for Appellant heretofore submitted for the reason that appellant had no funds with which to prosecute an appeal based on all errors. As a consequence the appellant chose to argue those errors committed in the Court below which were most obviously the basis for reversal.

The appellant now begs leave to raise and argue additional errors as follows:

A. Error was committed by the ruling of the District Court which denied defendant's motion made under Rule 21(a) of Federal Rules of Criminal Procedure for a transfer of the instant prosecution from the United States District Court for the District of Columbia to the United States Court for the Eastern District of Wisconsin, defendant [fol. 284] having averred that he could not obtain a fair



and impartial trial in the former District Court without presenting the testimony of many witnesses who resided in Milwaukee, Wisconsin, and the defendant having further averred that the witnesses were so numerous and resided at such a distance from the District of Columbia that he could not arrange for their presence at the trial of this indictment.

This error was substantial and highly prejudicial in view of the particular circumstances of the case. The appellant resided in Milwaukee and was a labor leader at the Allis-Chalmers Company plant in that city. The only way in which he could meet the charge on the merits was to bring a substantial number of witnesses who could provide a jury with a cross-section of his life, thus enabling the jury to conclude whether or not in fact he had committed perjury in answer to questions regarding his political affiliations. The trial court had discretion to grant or deny the motion below and since many of the witnesses presented by the Government were not resident in Washington, D. C., and since some of the Government's witnesses, as well as all of the proposed witnesses for the defendant, were resident in or near Milwaukee, no prejudice to the Government's case would have followed upon the granting of the motion.

Since the defendant was unable to call a substantial number of witnesses to the stand in Washington and could have done so had the trial taken place in Milwaukee, a clear case of prejudice to the appellant is apparent.

For the same reasons the error discussed immediately below was prejudicial.

[fol. 285] B. Error was committed by the ruling of the District Court which denied the defendant's motions under Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure, said motions being for an order requiring the issuance of a subpoena to each of the witnesses named in a supporting affidavit thereto and for the payment of the costs of issuance and service of such subpoena, as well as the fees to said witnesses by the Government, or in the alternative for an order permitting the defendant to take the deposition of said witnesses in advance of trial.

C. This Court erred in refusing to permit counsel for the defendant to read to the jury portions of the transcript of the defendant's testimony before the House Committee on Education and Labor, although said transcript was ad-

mitted into evidence over the objection of defendant. (*Tappan v. Beardsley*, 10 Wall. 427; 77 U. S. 427; 19 L. Ed. 974; *Cox v. United States*, 103 F. 2d 133, 137.)

### Conclusion

The rehearing herein should be granted and upon such rehearing the errors hereinabove set forth should be considered and the judgment of the District Court reversed.

Respectfully submitted, O. John Rogge, (M. O. W.)  
401 Broadway, New York 13, N. Y., Attorney for  
Appellant.

Service on original.

[fol. 286] [Stamp:] United States Court of Appeals for  
the District of Columbia Circuit. Filed Dec. 14, 1948.  
Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 9788

HAROLD ROLAND CHRISTOFFEL, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Before Edgerton, Clark and Prettyman, JJ.

### ORDER

On consideration of appellant's petition for rehearing filed in the above entitled case, it is

Ordered by the Court that the petition for rehearing be, and it is hereby, denied.

Per Curiam.

Dated December 14, 1948.

[fol. 287] [Stamp:] United States Court of Appeals for  
the District of Columbia Circuit. Filed Jan. 24, 1949.  
Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 9788

HAROLD ROLAND CHRISTOFFEL, Appellant,

against

UNITED STATES OF AMERICA, Appellee

DESIGNATION OF RECORD ON PETITION FOR WRIT OF CERTIORARI

The appellant's designation of record is as follows:

1. Joint Appendix.
2. Opinion.
3. Judgment.
4. Petition for rehearing.
5. Order denying the petition for rehearing.
6. This Designation of Record.
7. Clerk's certificate.

Dated: January 20, 1949.

O. John Rogge, Attorney for Appellant, 401 Broad-  
way, New York 13, N. Y.

[fol. 288] UNITED STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court  
of Appeals for the District of Columbia Circuit, formerly  
United States Court of Appeals for the District of Colum-  
bia, hereby certify that the foregoing pages numbered 1 to  
287, both inclusive, constitute a true copy of the joint appen-  
dix to the briefs of the parties, and the proceedings of the  
said Court of Appeals as designated by counsel in the case  
of Harold Roland Christoffel, Appellant, v. United States  
of America, Appellee, No. 9788, January Term, 1949, as the

same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this twenty-seventh day of January, A. D. 1949.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.  
(Seal.)

[fol. 289] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. —

HAROLD ROLAND CHRISTOFFEL, Petitioner,

v.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION  
FOR CERTIORARI

Upon consideration of the application of counsel for the petitioner,

It is ordered that the time for filing petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 28, 1949.

Fred M. Vinson, Chief Justice of the United States.

Dated this 5th day of January, 1949.

(615)

[fol. 290] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1948

No. 528

ORDER ALLOWING CERTIORARI—Filed March 28, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is assigned for argument during the week of April 18, 1949.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1805)



---

Supreme Court of the United States

No.

528

HAROLD ROLAND CHRISTOFFEL

UNITED STATES OF AMERICA

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA AND  
BRIEF IN SUPPORT THEREOF

---

# INDEX

	PAGE
Petition for Writ of Certiorari:	
Statement of the Matter Involved .....	2
Jurisdiction .....	9
Statutes and Resolutions Involved.....	9
Questions Presented .....	11
The Reasons Relied on for Allowance of the Writ	13
Conclusion . . . . .	15
Brief in Support of Petition:	
Opinion Below .....	17
Jurisdiction .....	17
Specification of Errors .....	17
Summary of Argument.....	19
POINT I—The Court of Appeals for the District of Columbia committed reversible error in af- firming the ruling and charge of the Trial Court concerning the competency of the House Com- mittee at the time the petitioner was sworn and testified .....	21
A. An analysis of the evidence reveals that there was ample basis for the jury to con- clude that a quorum of the House Committee was not in attendance at the time the peti- tioner was sworn and testified.....	22
B. It was incumbent upon the Government to prove that a quorum of the House Committee was actually present when the petitioner was sworn and testified.....	28

C. The presumption of innocence which attends upon the trial of any criminal charge overrides any presumption of continuance or of the regularity of official records; the latter presumptions are rebuttable.....	37
D. A witness who is not a member of a Congressional committee has no standing before the committee to raise a point of lack of quorum.....	38
E. The petitioner did not seek to impeach the committee hearings; had he attempted to do so, even by extrinsic evidence, it would have been proper in the defense of a criminal charge.....	41
POINT II—The Court of Appeals for the District of Columbia committed reversible error in affirming the conviction of petitioner for violation of the District of Columbia Criminal Code.....	43
POINT III—Petitioner was deprived of his right to a fair and impartial trial as guaranteed by the Fifth and Sixth Amendments of the United States Constitution by the denial of motions made by petitioner under Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure..	49
POINT IV—The Court of Appeals for the District of Columbia committed reversible error in affirming the rulings of the Trial Court concerning the investigation of the jury panel by the Federal Bureau of Investigations.....	53
POINT V—It was error for the Trial Court to refuse to permit petitioner to read to the jury the balance of an exhibit previously introduced by the Government and admitted over objection..	55
Conclusion .....	56

## TABLE OF CASES CITED

Avrshire Collieries Corp. v. U. S., 311 U. S. 132.....	31
Bailey v. Alabama, 219 U. S. 219.....	13, 38
Baltimore & Ohio Railroad Co. v. Lambert Run Coal Co., 267 F. 776 (C. C. A.).....	31
Caha v. United States, 152 U. S. 211.....	47
City of Bentwood v. Wheeling Railway Co., 52 W. Va. 465 .....	32
City of Somerset v. Somerset Banking Co., 109 Ky. 549 .....	32
College and Foods Products Co. v. London Packing Co., et al., 65 F. 2d 883.....	56
Commonwealth v. Garney, 217 Pa. 425.....	32
Conner v. Commonwealth, 4 Va. Rep. 30 (2 Va. Cas. 30) .....	32
Cumberland Telephone & Telegraph Co. v. Louisiana Public Service Commission, 260 U. S. 212.....	31
Ex parte Buistamente, 138 Texas C. R. 396.....	31
Ex parte Metropolitan Water Co., 220 U. S. 539.....	31
Furgeson v. Crittenden County, 6 Ark. 479.....	31
Greene v. Goodwin Sand & Gravel Co., 129 N. Y. Supp. 709 .....	32
Grobelny v. T. W. Cowen, Inc., 151 F. 2d 810.....	56
Hammond v. Hull, 131 Fed. 2d 23, cert. den. 318 U. S. 777 .....	37
Herfurth, Jr., Inc., et al. v. U. S., 85 F. 2d 719.....	56
Hyde v. Shine, 199 U. S. 62.....	14, 52
In the Matter of James Devine, 21 Howard's Practice Reports 80 (New York 1860).....	32, 42
Jagger v. Coon, 5 Mich. 31.....	31
Johnson v. United States, 225 U. S. 405.....	14, 49

Joslyn v. County Commissioners of Franklin County, 15 Gray (81 Mass. 567).....	32
Lewis v. Hawkins, 90 U. S. 119.....	37
Maggio v. Zeitz, 333 U. S. 56.....	13, 37
McLean v. City of St. Louis, 222 Ill. 510.....	32
Meyers v. United States ( F. 2d ).....	33, 40, 43, 44
New York Life Ins. Co. v. Gamer, 303 U. S. 161.....	37
O'Brien v. United States, 99 F. (2) 369.....	47
Olson v. State Tax Commission, 109 Utah 563.....	31
Oyama v. State of California, 332 U. S. 663.....	13, 38
People v. Barbour, 9 Calif. 230.....	31
People v. Lashkowitz, 3 N. Y. S. 2d 98.....	53
Ralls v. Wyand, 40 Okl. 323.....	30
Regina v. Lloyd (1887), 19 Q. B. D. 213.....	33
Rex v. Allen (1925), 1 D. L. R. 57 (Manitoba K. B.)..	33
Rex v. Rulofson. (1908), 14 Can. C. C. 253.....	33
Reynolds County Telephone Company v. City of Pied- mont, 152 Mo. App. 361.....	32
Sheatz v. Markley, 249 Fed. 315, cert. den. 247 U. S. 518.....	55
Sims v. Rives, 66 App. D. C. 24, 84 F. (2) 871, cert. den. 298 U. S. 682.....	44
Sinclair v. United States, 279 U. S. 749.....	54
State v. Farrar, 89 W. Va. 232.....	32
State ex rel. Hughes v. King, 27 N. C. 203.....	31
State of Missouri ex rel. Clark v. Sanders, 69 Mo. App. 472.....	31
State v. Porter, 113 Ind. 79.....	32
State ex rel. Stanford v. Ellington, 117 N. C. 158....	31
State of Vermont v. Freeman, 15 Vt. 722.....	33
Stratton v. St. Louis Southwestern Ry. Co., 282 U. S. 10.....	31



	PAGE
Tappan v. Beardsley, 77 U. S. 427.....	15, 55
Thomas v. Loney, 134 U. S. 312.....	46, 47, 48
Trise v. Crittenden County, 7 Ark. 159.....	31
United States v. Bedgood, 49 F. 54 (D. C. S. D. Ala. 1891) .....	45
United States v. Creech, 21 Fed. Supp. 439 (D. D. C.) .....	47
United States v. Curtis, 107 U. S. 671.....	45
United States v. Doshen, 133 F. 2d 757 (C. C. A. 3) ..	45
United States v. Garcelon, 82 F. 611 (D. Col.).....	45
United States v. Law, 50 F. 915 (D. C. W. D. Va. 1892) .....	45
United States v. Mannion, 44 F. 800 (D. C. D. Wash. N. D. 1890) .....	45
United States v. McWilliams, United States District Court, D. C., April, 1944 (unreported).....	54
United States v. Seymour, 50 F. 2d 930 (D. C. Neb.) ..	47
United States v. Stewart (Dist. Ct., Dist. of Columbia, November 20, 1928, crim. no. 47138).....	33, 34, 35, 36
United States v. Walsh, 22 Fed. 644.....	41
West v. Burke, 60 Texas 51 .....	31
Wilkes v. Dinsmon, 48 U. S. 89.....	37

### OTHER AUTHORITIES CITED

Constitution of the United States	
Art. I, Sections 1, 2.....	46
Fifth and Sixth Amendments.....	12, 14, 21, 52, 53, 54
Federal Rules of Criminal Procedure	
Rule 15(a) .....	6, 14, 49
Rule 17(b) .....	6, 14, 49, 51
Rule 21(a) .....	6
Rule 37(b) .....	9

	PAGE
Jefferson's Manual, Rules and Manual of the United States House of Representatives (1947)	
Section 310 .....	39
Section 409 .....	9, 30
Judicial Code, as amended by the Act of February 13, 1925, Section 240(a) .....	9
Legislative Reorganization Act of 1946	
Part 2, Rules of House of Representatives .....	9
Part 3, Section 133(d) .....	30
Legislative Reorganization Act of 1946, Title I, Part 2, Section 121(a) .....	46
R. S. § 725 .....	44
Title 22, Section 2501, District of Columbia Criminal Code .....	2, 10, 11, 12, 13, 18, 19, 43, 45
2 U. S. C. A. § 191 .....	45
2 U. S. C. A. § 231 .....	45
6 Cannon's Precedents § 345 .....	34, 36
18 U. S. C. § 231 .....	2, 10, 11, 12, 47, 48
18 U. S. C. § 687 .....	9
21 Howard's Practice Reports 80 (N. Y. 1860) .....	42
28 U. S. C. § 380 and 380a .....	31
28 U. S. C. A. § 385 .....	44
48 Corp. Jur. p. 856 .....	45
III Hinds' Precedents, Section 1774 .....	30
VII Wigmore on Evidence § 2113 .....	55
IX Wigmore on Evidence § 2534 .....	37

IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1948

No.

HAROLD ROLAND CHRISTOFFEL,  
*Petitioner,*

v.

UNITED STATES OF AMERICA

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA**

*To the Honorable The Chief Justice of the United  
States and The Associate Justices of The Su-  
preme Court of the United States:*

The petitioner herein prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals, District of Columbia, entered November 22, 1948 (R.      ), affirming the judgment of conviction of the petitioner in the United States District Court for the District of Columbia (R. 28).

## Statement of the Matter Involved

The petitioner has been found (R. 268) and adjudged (R. 28) guilty of the crime of perjury as defined by Title 22, Section 2501, of the District of Columbia Criminal Code\* (R. 1, 28, 256); and the judgment of conviction has been affirmed by the United States Court of Appeals for the District of Columbia (*Christoffel v. U. S.*, 15 F. 2d ).

Late on the afternoon of Saturday, March 1, 1947, in the City of Washington, D. C., the petitioner, an employee of the Allis-Chalmers Manufacturing Co., a resident of and trade union leader in the City of Milwaukee, Wisconsin, was called upon to and did give certain testimony. The alleged perjury was committed at that time; it consisted of answers given in response to questions put by a solitary congressman, to wit, Rep. Clare Hoffman of Michigan, a member of the 80th Congress and of the Committee on Education and Labor of the House of Representatives of that Congress. The circumstances of the alleged crime are set forth below.

The Committee on Education and Labor\*\* was (and is) a standing committee of the House of Representatives (Legislative Reorganization Act of 1946). During the first session of the 80th Congress, it held numerous hearings on proposed amendments to the National Labor Relations Act and in the week of February 24, 1947, it held such hearings every day.\*\*\* On Monday of that week (February 24) the entire day was devoted by the House Committee to hearing the unsworn testimony of representatives of the Allis-Chalmers Manufacturing Co. of Milwaukee who, in addition, submitted to the Committee a voluminous documenta-

\* As distinguished from the crime of perjury defined by 18 U. S. C. § 231.

\*\* Hereinafter sometimes referred to as the "House Committee."

\*\*\* Hearings before the Committee on Education and Labor, House of Representatives, 80th Congress, First Session, Vol. 3, pp. 1335, *et seq.* (hereinafter referred to as House Committee Hearings (Gov't Exhibit No. 6; R. 141)).

tion of charges that the petitioner and other members of his union were Communists. At the time of these hearings, the petitioner's union was conducting a strike against Allis-Chalmers.\*\*

Two days after receiving this unsworn testimony, Rep. Hartley of New Jersey, Chairman of the House Committee, on the floor of the House of Representatives, sought and received authority to administer oaths to witnesses.\*\*\* This authority was not exercised in the case of any one of the many witnesses who appeared before the House Committee on the three days immediately preceding March 1, 1947,\*\*\* but was used for the first time on March 1, 1947, when the petitioner and other representatives of his striking union appeared to testify.\*\*\*\*

When the House Committee adjourned for the day late on the afternoon of Friday, February 28, 1947, the Chairman, anticipating the hearings of the next day, announced that it would meet the following morning at 10:00 A. M. "at which time we will hear the witnesses that were in the *Allis-Chalmers* case who were requested to appear before the Committee" (House Committee Hearings, Vol. 3, p. 1973). On the following morning, as soon as the Committee had been called to order at 10:00 A. M., the Chairman called out the petitioner's name and otherwise indicated the Committee's disposition to hear him as the first order of business. It was at once apparent that the petitioner was ill and could not appear before the House Committee until later in the day (House Committee Hearings, Vol. 4, pp. 1973, 2079). Consequently Robert Buse, president of the petitioner's local union, and R. J. Thomas, vice president of petitioner's international union, gave their testimony

\* *Ibid.*, pp. 1335 et seq.

\*\* *Ibid.*, p. 1355.

\*\*\* Cong. Rec. Vol. 93, pp. 1504-1510; Gov't Exhibit No. 2 (R. 31) (House Resolution No. 111 adopted Feb. 26, 1947).

\*\*\*\* House Committee Hearings, Vol. 3, pp. 1627, et seq.

\*\*\*\*\* *Ibid.*, Vol. 4, pp. 1973, et seq.



4

before the petitioner appeared; both witnesses were sworn (House Committee Hearings, Vol. 4, pp. 1973, 2049).

Buse and Thomas made oral statements, answered questions and submitted memoranda which pertained to proposed amendments to the National Labor Relations Act, to the pending strike by their union at the Allis-Chalmers plant in Milwaukee and to the causes and issues involved therein (House Committee Hearings, Vol. 4, pp. 1973-2079).

The petitioner, having recovered from his illness sufficiently to make an appearance, began his testimony some time after 4:00 P. M. on this Saturday afternoon (R. 52, 100, 166, 175, 192, 199, 222); most of his testimony was addressed to the pending strike at Allis-Chalmers, the proposed methods of settling it, various theoretical labor-management problems, and certain legislative recommendations proposed by his union (House Committee Hearings, Vol. 4, pp. 2079-2094). None of this testimony was alleged to be perjurious (R. 1-8). The offensive responses occurred just prior to 5:00 P. M., the hour when the few remaining members of the House Committee went into "executive session" (House Committee Hearings, Vol. 4, p. 2100), and at the tail end of the petitioner's testimony that day.

The preface to the testimony which formed the basis of the indictment below was most disarming. Before inquiring into the subject of political affiliation of the petitioner, upon which subject the petitioner might well have remained mute if he so chose, Representative Hoffman stated:

"I want to ask you a few questions that may seem unnecessary, but just for the sake of the record, and they are very short and you can answer them very quickly" (House Committee Hearings, Vol. 4, p. 2094).

In the wake of this inadequate introduction there followed a series of questions which were directed to political affilia-

tion and association of the petitioner. The answers to these questions were forthright and unequivocal. In them the petitioner denied that he was a Communist or that he endorsed, supported or participated in Communist programs. These answers are the heart of the indictment.

In connection with this testimony it is significant that Buse, Thomas and the petitioner were unattended by counsel. Moreover, though a statement by the Chairman of the House Committee as to the purposes of the hearings was made and heard by the petitioner, no effort was made to advise or inform him of his legal rights when thus testifying under oath regarding subject matter which might well be incriminating in areas exclusive of perjury (House Committee Hearings, Vol. 4, pp. 1973, 2049, 2079).

The indictment herein was returned and filed on July 23, 1947 (R. 28) and the petitioner pleaded "Not Guilty" to it (R. 28). Thereafter he moved to dismiss the indictment on multiple grounds (R. 8). In urging this course on the District Court, the petitioner called attention to the fact that though at the time of the alleged perjury he was engaged before a federal body inquiring into matters of general federal importance he nevertheless was charged with violating a criminal statute of local operation. In this connection he pointed out not only that perjury in such circumstances could not impede the functioning of local government in the District of Columbia but that a local crime could not have been generated by the events heretofore described since the administration of the oath, an essential element of the crime, was not authorized by any applicable local statute (R. 8, 9).

Similarly, the petitioner urged dismissal of the indictment on the theory that it failed to aver the attendance of a quorum of the House Committee at the time he was sworn as well as at the time he committed the alleged perjury (R. 9).

The District Court denied the motion to dismiss (R. 10) and in so doing committed error as hereinafter, in this petition, noted.

Thereafter, and in advance of trial, as appears from the original record herein, the petitioner sought to remove his prosecution to the Eastern District of Wisconsin wherein he resided and wherein his political life, affiliations and associations must have had their roots. This effort, made under the authority of Rule 21 (a) of the Federal Rules of Criminal Procedure, was supported by allegations that the petitioner could not obtain a fair and impartial trial in Washington, D. C. not merely because of the abnormal attitude then prevailing in that city amongst government employees and other potential jurors respecting political affiliation or association with Communists but also because a fair trial in Washington, D. C., was an impossibility without granting to the petitioner the opportunity of presenting to the jury the testimony of many witnesses who resided in the Eastern District of Wisconsin, who knew the petitioner's affiliations and associations for many years and who were so numerous and distant from Washington, D. C. as to make it virtually impossible to arrange for their attendance in Washington, D. C. This motion was, as the petitioner contends, improperly denied.

Seeking to lessen the unnaturally heavy burden of proving the negative of the charge that he was a Communist, the petitioner then sought, pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure, an order of the District Court requiring the government to pay subpoena and witness fees to numerous but named potential witnesses whose testimony the petitioner would want on trial but whose presence was otherwise financially impossible. In the alternative, the petitioner sought to take the depositions of such witnesses under Rule 15a. Both applications were denied.

17

The prosecution was commenced on February 16, 1948 before CURRAN, J. (R. 28) and at the outset it was apparent not only that government employees were on the jury panel but that an investigation of said panel had been made by the Federal Bureau of Investigation. Counsel sought the benefit of information thus supplied to the prosecution regarding the prospective jury which was to adjudge the petitioner's guilt or innocence. This was denied (R. 29) as was the petitioner's motion to disqualify the panel (R. 30) because of the impropriety inherent in such investigation.

On the trial herein, the petitioner actively opposed the charge of perjury and six witnesses testified in his behalf on the merits.

During the trial a major issue developed from the petitioner's contention that before he could be convicted of the crime of perjury under any statute which might be held applicable, the government must prove beyond a reasonable doubt that the petitioner was sworn and testified falsely before a quorum of the House Committee (R. 9, 11, 23, 24, 33, 36, 37, 40, 73, 79-83, 119-143, 244, 245, 259, 260, 267).

The Trial Judge denied petitioner's requests for instructions on this subject (numbered 15-20) (R. 244, 245) and, on the contrary, held and charged:

"In this case the Committee being composed of 25, before you could have a meeting of that Committee there must have been physically present at least 13 members of that Committee in the committee room. If such a Committee so met, that is, if 13 members did meet . . . and thereafter during the progress of the hearing some of them left temporarily or otherwise and no question was raised as to the lack of a quorum, then the fact that the majority did not remain there would not affect, for the purposes

\* This part of the record below is not printed.



of this case, the existence of that Committee as a competent tribunal *provided that* before the oath was administered and before the testimony of the defendant was given *there were present* as many as 13 members of that Committee *at the beginning of the afternoon session* (R. 259, 260). (Italics added.)

In addition the Trial Judge held and charged that:

For the purpose of this case perjury is defined by the Code of Laws of the District of Columbia, Title 22, Section 2501 which provides that:

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify truly, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true shall be guilty of perjury' (R. 256).

To both these charges exceptions were duly noted (R. 267).

On March 3, 1948, after almost four hours of deliberation, the jury returned a verdict of guilty (R. 28, 268) and two days later the petitioner filed a motion for new trial or for judgment of acquittal (R. 23) which was promptly denied (R. 22, 271) except as to Count II of the Indictment (R. 22, 271). Thereupon the petitioner was sentenced to imprisonment for a period of two to six years (R. 23, 272).

The cause was argued before the United States Court of Appeals for the District of Columbia on October 18, 1948 and the conviction affirmed on November 22, 1948 (*Christoffel v. U. S.*, F. 2d ). Rehearing was, by that Court, denied on December 14, 1948.



## Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 43, 1925 (28 U. S. C. § 347); Federal Rules of Criminal Procedure, Rule 37(b) (18 U. S. C. foll. § 687).

## Statutes and Resolutions Involved

1. *Jefferson's Manual, Rules and Manual of the United States House of Representatives* (1947), Section 409:

"A majority of the committee constitutes a quorum for business."

2. *Legislative Reorganization Act of 1946*, Part 2—Rules of the House of Representatives.

"Rule X, Standing Committees

(a) There shall be elected by the House, at the commencement of each Congress, the following Standing Committees:

1. . . .

7. Committee on Education and Labor, to consist of twenty-five members."

## Part 3, Provisions Applicable to Both Houses Committee Procedure

"Sec. 133. (a) . . .

(b) Each such committee shall keep a complete record of all committee action . . .

(c) . . .

(d) No measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present."

3. Title 22, Sec. 2501 District of Columbia Code:

"Title 22, Sec. 2501—Perjury—Subornation of perjury. Every person who, having taken an oath or affirmation before a competent Tribunal, officer or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years . . ." (March 3, 1901, 31 Stat. 1329, Ch. 854 § 856).

4. Title 18 U. S. C. § 231.

"Perjury. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than \$2,000 and imprisoned not more than five years. (R. S. § 5392; Mar. 4, 1909, c. 321, § 125, 35 Stat. 1111.)"

5. House Resolution #111 of the House of Representatives, adopted February 26, 1947 (93 Cong. Rec. 1504).

"RESOLVED, that the Committee on Education and Labor, acting as a whole or by subcommittees, is authorized and directed to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such Committee under Rule XI (1) (g) of the Rules of the House of Representatives, and for such purposes the said Committee or any Subcommittee thereof is hereby authorized to sit

and act during the present Congress at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers and documents, as it deems necessary. Subpoenas may be issued over the signature of the Chairman of the Committee or any member of the Committee designated by him, and may be served by any person designated by such Chairman or member. The Chairman of the Committee or any member thereof may administer oaths to witnesses. That the said Committee shall report to the House of Representatives during the present Congress the results of their studies and investigations with such recommendations for legislation or otherwise, as the Committee deems desirable."

### Questions Presented

1. Whether a Congressional Committee is a competent tribunal within the meaning of the United States Code, Title 18, § 231 or the District of Columbia Code, Title 22, § 2501 in the absence of a quorum of such a committee at the time a witness is sworn and at the time a witness testifies.

2. Whether a Congressional Committee, once having duly convened but having thereafter continued to sit without a quorum, is a competent tribunal within the meaning of the United States Code, Title 18, § 231 or the District of Columbia Code, Title 22, § 2501.

3. Whether the presumption of innocence, which attends upon the trial of any criminal charge, overrides any presumption of continuance or presumption of regularity of official records relied upon by the courts below as the basis for holding that a Congressional Committee is a com-

petent tribunal within the meaning of United States Code, Title 18, § 231, or the District of Columbia Code, Title 22, § 2501, if validly convened, irrespective of the absence of a quorum at the time a witness was sworn and at the time a witness testified.

4. Whether a witness may, in a prosecution for perjury before a Congressional Committee, assert as a defense thereto lack of a quorum of the committee at the time he was sworn and at the time he testified though at the time of testifying before the Congressional Committee no point of lack of quorum was made by the witness or any member of the committee.

5. Whether the crime of perjury will lie under the District of Columbia Code, Title 22, § 2501 when predicated on testimony given before a federal legislative tribunal inquiring into matters of general federal importance.

6. Whether members of Congress are authorized to administer oaths within the meaning of the District of Columbia Code, Title 22, § 2501.

7. Whether the Trial Court erred in denying the petitioner's motions to take the deposition of numerous residents of the Eastern District of Wisconsin wherein the petitioner was also resident in the light of the Trial Court's denial of the petitioner's motion to have the government defray the cost of subpoena and witness fees for said numerous witnesses.

8. Whether the investigation of a jury panel by the Federal Bureau of Investigation is unconstitutional in that it denies a fair and impartial trial in a criminal case as guaranteed by the Fifth and Sixth Amendments to the Constitution of the United States.



9. Whether the Trial Court erred in refusing to make available to the petitioner the results of an investigation of the jury panel by the Federal Bureau of Investigation.

10. Whether the Trial Court erred in refusing to permit the petitioner to read to a jury from the transcript of his testimony before a Congressional Committee when that document was received in evidence over petitioner's objections.

### **The Reasons Relied on for Allowance of the Writ**

1. The United States Court of Appeals for the District of Columbia and the District Court for the District of Columbia have decided a question of foremost importance which has not been settled but which should be settled by this Court. The lower courts have held that a Congressional Committee is a competent tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501 in the absence of a quorum of such a committee at the time a witness is sworn and at the time he testified. Moreover, these courts have held that a Congressional Committee once having been duly convened is a competent tribunal within the meaning of the foregoing statute regardless of whether thereafter a quorum was present at the time a witness was sworn and testified. These decisions mean that the existence of a competent tribunal is irrebuttably presumed. Thus the decision results in a total destruction of the presumption of innocence in violation of the due process clause of the Fifth Amendment to the United States Constitution and in conflict with applicable decisions of this Court. *Bailey v. Alabama*, 219 U. S. 219; *Oyama v. State of California*, 332 U. S. 663; *Maggio v. Zeitz*, 333 U. S. 56. In view of the increased scope of Congressional investigation the decisions below are of extreme importance and commend themselves to review by this Court.



2. The United States Court of Appeals for the District of Columbia has held that perjury before a Congressional committee is an offense punishable under the District of Columbia Code. The decision is in conflict with applicable decisions of this Court. *Johnson v. United States*, 225 U. S. 405.

3. The United States District Court for the District of Columbia has decided a question relating to the construction of the Fifth and Sixth Amendments to the United States Constitution and to the Federal Rules of Criminal Procedure. Rule 17(b) of said Rules provides that the Court, upon motion or request of an indigent defendant, may order a subpoena to be issued, and "if the court or judge orders the subpoena be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the Government." The petitioner so moved as well as in the alternative for the right to take depositions of witnesses as provided in the Federal Rules of Criminal Procedure, Rule 15(a). The denial of these motions foreclosed the right and ability of the petitioner to present evidence in his own behalf, denied him a fair and impartial trial, and is in conflict with the decision of this Court in *Hyde v. Shine*, 199 U. S. 62.

4. The United States Court of Appeals for the District of Columbia has decided a question of the utmost importance relating to the construction of the Fifth and Sixth Amendments to the United States Constitution in that it approved the failure to disqualify a jury panel after, or to give the petitioner the benefit of, investigation of said jury panel by the Federal Bureau of Investigation. Such an investigation impairs the right to a fair and impartial trial in violation of the Fifth and Sixth Amendments to the United States Constitution, especially, where Government employees were members of the jury panel and were sub-

sequently enrolled as jurors and where a question of the petitioner's political affiliation and association was involved.

5. The United States District Court for the District of Columbia denied the petitioner the right to read to the jury from the transcript of his testimony before a Congressional committee when the perjured testimony was part of said document and when said document, over objections of the petitioner, was in evidence and when the Government had been accorded the right to read parts of it to the jury. That determination involved a departure by the District Court from the accepted and usual course of judicial proceedings and requires the exercise of this Court's power of supervision. *Tappan v. Beardsley*, 77 U. S. 427.

## CONCLUSION

For the reasons stated it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

HAROLD ROLAND CHRISTOFFEL,  
*Petitioner.*

O. JOHN ROGGE,  
*Attorney for Petitioner.*

HERBERT J. FABRICANT,  
MURRAY A. GORDON,  
ROBERT H. GOLDMAN,  
*Of Counsel.*

# Supreme Court of the United States

OCTOBER TERM, 1948

No. \_\_\_\_\_

HAROLD ROLAND CHRISTOFFEL,

*Petitioner.*

UNITED STATES OF AMERICA.

## BRIEF IN SUPPORT OF PETITION

### Opinion Below

The opinions of the District Court are unreported. The opinion of the United States Court of Appeals for the District of Columbia (R. ) is reported at F. 2d

### Jurisdiction

The basis for this Court's jurisdiction is set forth in the Petition at page 9.

### Specification of Errors

1. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the Trial Court

improperly ruled and charged that a Congressional committee is a competent tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501, in the absence of a quorum of such committee at the time the petitioner was sworn and at the time petitioner testified.

2. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the Trial Court improperly ruled and charged that it was immaterial in establishing the competence of a Congressional committee as a tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501, whether there was a quorum of said committee in attendance at the time the petitioner was sworn and testified so long as the Congressional committee had been duly convened.

3. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the Trial Court by its ruling and charge improperly determined that the competence of a Congressional committee as a tribunal within the meaning of the District of Columbia Code, Title 22, Section 2501, was irrebutably presumed thus unconstitutionally eliminating the presumption of innocence which attended the petitioner and foreclosing from consideration of the jury the proof on the subject of a lack of quorum.

4. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the petitioner had no standing before a Congressional committee to raise the point of no quorum though the petitioner was not a member of that body.

5. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction

tion of the petitioner on the ground that he was improperly indicted and tried under the District of Columbia Code, Title 22, Section 2501.

6. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the administration of the oath to the petitioner was un-authorized.

7. The United States Court of Appeals for the District of Columbia erred in failing to reverse the conviction of the petitioner on the ground that the investigation of the jury panel by the Federal Bureau of Investigation and the failure to make available to the petitioner the results of such investigation was an unconstitutional denial of the fair and impartial trial guaranteed to the petitioner by the Fifth and Sixth Amendments to the Constitution of the United States.

Other specifications of error are set out in detail in the Questions Presented in the petition.

### Summary of Argument

False testimony does not constitute perjury within the meaning of the District of Columbia Code, Title 22, Section 2501, unless adduced before a competent tribunal. The tribunal before which the petitioner testified was a standing committee of the House of Representatives consisting of twenty-five members. To establish the crime of perjury it was incumbent upon the Government to prove beyond a reasonable doubt that a quorum of the committee was actually present when the petitioner was sworn and testified. The ruling and charge of the Trial Court, approved by United States Court of Appeals for the District of Columbia, improperly holds that a Congressional committee is a competent tribunal within the meaning of the perjury statute irrespective of the presence of a quorum at



the time the petitioner was sworn and testified if said committee was duly convened. However, no precedent of this or any other Court supports such a determination. On the contrary, all authorities proceed from the proposition that the act of or before a multiple member tribunal is valid only if a quorum thereof was present at the time of the act in issue. By their rulings the courts below created an irrebuttable presumption that the House Committee was a competent tribunal within the meaning of the perjury statute, thus unconstitutionally eliminating the presumption of innocence and foreclosing the right of the petitioner to prove lack of competency. In addition the determinations below are predicated on the mistaken notion that one not a member of the House Committee has standing to raise a point of lack of quorum. Furthermore, to the extent that the rulings below were predicated on a theory that the petitioner sought to improperly impeach the committee hearing they were in error. In the first instance the petitioner did not assail the validity of any legislative function of the committee by proving lack of a quorum, and in the second place impeachment of the committee hearing for the purpose of establishing a defense to a criminal charge, either by official records or by extrinsic evidence, is proper.

The petitioner gave testimony before a federal body engaged in hearings on matters of general federal importance. False testimony before such a committee, if it was an offense at all, was an offense solely against the public justice of the United States and in no way offended against the local sovereignty. The federal perjury statute and the local perjury statute while existing together have separate spheres of operation and the petitioner did not offend against the local statute. Moreover, no local statute authorized the administration of an oath to the petitioner by a federal officer and consequently an essential element of the crime of perjury was unproved.

Petitioner was denied a fair and impartial trial because the rulings of the Trial Court foreclosed the presentation

of evidence in his own behalf in violation of the Fifth and Sixth Amendments to the Constitution of the United States in that the Trial Court denied the petitioner's motion for the Government to subpoena and pay for the costs of bringing witnesses from a distant city to the trial forum and denied the alternative motion for the taking of said witnesses' depositions.

Moreover the petitioner was denied a fair and impartial trial by the determination below approving the denial of petitioner's motion to disqualify the jury panel when the same had been investigated by the Federal Bureau of Investigation on the eve of trial and the results thereof not furnished to the petitioner though Government employees were members of the jury and subject to the operation of Executive Order #9835 and the issue upon which they were to pass was the question of the petitioner's political ideology, activity and associations.

Furthermore the petitioner was denied a fair and impartial trial by the Trial Court's denial of his right to read to the jury from his own testimony before the House Committee when the transcript of such testimony, over objection, was received in evidence, and when the Government had been afforded the opportunity to read from it.

## **POINT I**

**The Court of Appeals for the District of Columbia committed reversible error in affirming the ruling and charge of the Trial Court concerning the competency of the House Committee at the time the petitioner was sworn and testified.**

An analysis of the record herein discloses that as the evidence progressively tended to establish the lack of a quorum of the House Committee or to rebut any presump-

tion of quorum, the Trial Court *pari passu* made the presumption irrebutable. The United States Court of Appeals for the District of Columbia affirmed in the following language:

"We hold only that a hearing before a regularly convened Congressional committee, appearing from the committee's record to be regularly conducted, and later recognized, as this hearing was, by the committee and by the House, cannot afterwards be impeached, for the benefit of a defendant who did not at the time question its regularity, by showing that a quorum was not in fact present when he gave false testimony. So much, we think, is required by a reasonable regard for the substance of being, and by the respect Courts owe to Congress" (*Christoffel v. U. S.*, F. 2d ).

The Trial Judge refused to submit to the jury the question of whether or not there was a quorum of the House Committee present at the time the petitioner was sworn and testified and instead charged as indicated hereinabove at page 7. It is the contention of the petitioner that the courts below erred herein.

**A. An analysis of the evidence reveals that there was ample basis for the jury to conclude that a quorum of the House Committee was not in attendance at the time the petitioner was sworn and testified**

None of the documentary evidence adduced below by the Government showed that as many as the necessary thirteen members of the House Committee were present at the time in issue. Government Exhibit 4 (R. 37) showed only those present at the beginning of the afternoon session on March 1, 1947 (R. 38); Government Exhibit 5 (R. 41), part of the Journal of the House Committee, purported to show only who was present "during the afternoon and the morning of March 1, 1947" (R. 39) but did

not reflect which Committee members were present at any particular time (R. 45).

The Government did attempt to prove the number of members of Congress who were present at the time the petitioner was sworn. Thus the subject was raised on direct examination of the Clerk of the Committee as follows:

Q. Were you present at the time the defendant Christoffel was sworn by the Chairman? A. I was.

Q. Do you know how many members were present at that time? A. No, I could not vouch for that. I do know—" (R. 38).

The same witness, on direct examination, could not state how many members of the Committee were present when the petitioner testified (R. 42).

Congressman Hartley, the Chairman of the Committee, believed that a quorum of the Committee was present at the time the petitioner was examined (R. 89). Other Congressmen questioned on the subject could give no direct evidence but were vague and uncertain on the subject (R. 164, 175, 176, 200, 222, 233).

A number of things are clear however. To begin with, the oral testimony demonstrated that Congressmen go in and out of committee meetings frequently. It was true on the afternoon of March 1, 1947 (R. 39-40, 148, 194, 231).

The precise time at which the petitioner testified was important. Although the estimates of the hour at which Christoffel took the witness chair vary, there seems to be no dispute that it was some time after 3:30 on Saturday afternoon. Martin C. Smith, the shorthand reporter, testified that he did not start reporting the afternoon session until that hour (R. 74) and the session was concluded "before 5 o'clock" (R. 76).

The Clerk of the Committee conceded that the petitioner's testimony before the Committee took place at some time between 4:30 and 5 o'clock that afternoon (R. 52) and Congressman Hartley established the hour at about 4 o'clock (R. 100). Other Congressmen were in substantial agreement and placed the testimony late in the afternoon (R. 166, 175, 192, 199, 222).

There was no formal roll call of the Committee members (R. 44). However, all the witnesses were in agreement as to the existence of a regular procedure which was followed in Committee meetings and in the questioning of witnesses. This regular procedure actually called the roll and registered the attendance in the official transcript of the House Committee's hearings (Government Exhibit No. 6; R. 141).

The procedure was explained by the Committee Clerk (R. 53-65). It consisted of calling upon each Republican Congressman in order of seniority and then similarly upon each Democratic Congressman. Both the Clerk of the Committee and the Chairman indicated that the latter was very meticulous in following this regular procedure (R. 55, 89, 90, 107). Congressman Hartley testified:

"Q. Did you follow that procedure on Saturday? A. I think I must have followed it just as religiously as I did at every hearing.

Q. You followed that religiously? A. Quite regularly; yes" (R. 90).

The Chairman also noted that he usually called on all Congressmen who were present in this fashion although sometimes he might not recognize a Congressman by name because of having received some informal indication of a particular Congressman's desire to be passed in the questioning (R. 90-91). However, it is clear that on the afternoon of March 1st no Congressman gave any such informal instruction to the Chairman (R. 94, 178).



The regular procedure constituted a roll call (R. 58) and Congressman Hartley so testified.

Q. In other words, with reference to each of these witnesses, you had what amounted in effect to a roll call? A. Yes, I think that might be a clear assumption.

Q. That is a fair statement? A. Yes. (R. 91).

This roll call is direct evidence of the number of Congressmen present at any particular time that attendance was established in this fashion.

The record below discloses that such a roll call was taken on the afternoon of Saturday, March 1, 1947. The occasion was the testimony of Mr. Thomas, who immediately preceded the petitioner on the stand.

Q. Now, let's look at the afternoon session. Now, the witness who immediately preceded Mr. Christoffel was Mr. Thomas; that's correct, isn't it? A. That's right.

Q. And on Mr. Thomas there was one of these go-arounds, one of these roll calls, in effect. A. That's right" (R. 64).

This testimony by the Clerk of the Committee was subsequently confirmed by the testimony of the Chairman of the Committee (R. 92).

There is no evidence in the record disputing the fact that such a roll call did in fact take place late that afternoon. Moreover, it is clear from the testimony that this was the *only* roll call which took place on that afternoon. It took place "somewhere between 3:30 and a quarter to 4" and just prior to the advent of the petitioner for examination by the Committee (R. 92).

*An analysis of Government Exhibit 6 discloses that on this call of the roll only eleven members of the House Committee were present although thirteen constituted a quorum. The Chairman of the Committee confirmed that*

Government Exhibit 6 disclosed only eleven members present at the time of the call of the roll (R. 97). Confronted by the official documentary evidence of an absence of a quorum both the witness McArthur and the witness Hartley attempted explanations. The latter, for instance, stated:

"A. This record may indicate that, but as I said before, there are times, and I qualified it by saying, there are exceptions, when I may have taken a nod from a Committee member to indicate he didn't have any questions, and probably didn't call upon him, . . ." (R. 97).

However, despite this effort to explain away the clear evidence of lack of quorum, the witness had previously been committed to the statement that no Congressman indicated that he wished to be passed that afternoon (R. 94). Subsequently the Chairman stated:

"It says on the record, which I have before me, and I have little doubt but they were the members, identified in this record, were the members who were present" (R. 103).

When Chairman Hartley insisted that others must have been present the following dilemma was presented:

"Q. Do you know of any others who were present at that time, other than ones you called upon?

A. Definitely, no. I can't identify them definitely.

Q. If they had been present, you would have called upon them, wouldn't you? A. Most likely I would have.

Q. At the time of Thomas were there ten and yourself present? A. That's right.

Q. And then we go to Christoffel. A. That's right.

Mr. Pratt: I object to that inference, that those were the only members present.

The Court: He did not testify those were the only ones present.

*By Mr. Rogge:*

Q. We know at the time that Thomas testified that ten members and yourself were present, and you don't know of any additional members who were there, do you? A. Positively I can't identify any others although I feel certain that there must have been a quorum present, but based on this record, apparently, there were ten and myself at the time Mr. Thomas was questioned.

Q. In other words, based on that record, and as you stated, although you tried to keep a quorum, but based on that record, can't you tell us that at the time of the questioning of Mr. Thomas there wasn't a quorum present? A. With definiteness, I could not say that. I can't say that there wasn't a quorum present, although this record indicates that there were just ten and myself" (R. 103-4).

This testimony is the only testimony offered through Congressmen as to the attendance of the Committee members that afternoon. Indeed, in view of the rulings of the Court thereafter, no effort was even made to show who was present at the time that Thomas testified or at the time that Christoffel testified. The Government failed to make this effort despite the fact that each and every Congressman supposed to have been present at the outset of the afternoon session testified on the trial.

However, there was additional and uncontradicted testimony which confirmed the evidence given by Congressman Hartley and recorded in Government Exhibit 6.

Fred McStroul was present on March 1, 1947 when the House Committee was holding its session (R. 142) and on Saturday afternoon when the petitioner testified (R. 142).

McStroul confirmed the fact that Christoffel began his statement somewhere about 4 o'clock in the afternoon (R. 142). The witness then testified in answer to questions

by counsel and the Court that Congressman Lesinsky, one of those shown to be present at the beginning of the session (Government Exhibit 4), was absent at the time that Christoffel was undergoing questioning by Congressman Hoffman.

"The Witness: All I can say is that there was a time I wanted to send a note to Mr. Lesinsky . . . and he wasn't there.

By Mr. Rogge:

Q. When you say he wasn't there, whom do you mean? A. Mr. Lesinsky" (R. 143).

Thereafter the witness testified that except for Congressman Kennedy the Democratic side of the Committee was empty (R. 147).

But the testimony of McStroul went further. After indicating the basis for his recollection, *McStroul testified that at the time petitioner was being questioned there were only nine Congressmen present* (R. 149), and when the meeting adjourned "around 5 o'clock, whenever it was," there was just a handful of the Congressmen present.

"Q. How many? A. Oh, less than seven; that I am fairly sure of.

By the Court: Six?

A. About six" (R. 150).

**B. It was incumbent upon the Government to prove that a quorum of the House Committee was actually present when the petitioner was sworn and testified**

Neither the Trial Court, the Government nor the United States Court of Appeals for the District of Columbia has cited any authority for the novel and extraordinary proposition of law which this Court is now respectfully asked to pass upon.

Every authority examined by the petitioner proceeds from the proposition that the act of or before a multiple member agency—including Congressional committees—is valid only if a quorum thereof was present *at the time of the act in issue*; it nowhere appears that a quorum at some other earlier time validates a subsequent act made or taken in the absence of a quorum.

Thus, on May 17, 1918 the question arose as to whether a quorum of the House Committee on Territories had been present at a meeting called to consider a pending bill. The following exchange took place on the floor of the House:

“Mr. Houston: The committee was called and met; and six or seven members were in the room at a time—I am not sure of just the number. It requires nine to make a quorum. There were not nine present in the room *at any given time, but they came into the room, cast their vote, told how they wanted to be recorded, and went to attend to their business. There was an attendance of a quorum: they were not all present in the room at any one time.* . . .

“The Speaker: The chair does not think that is a committee meeting. On pages 396 and 397 of the Rule Book, beginning on page 395, the chair rendered an elaborate opinion on the very same subject matter, after a most careful scrutiny and consideration. *A committee sits as a unit* and you cannot get a bill up here by getting your report signed by various members of the committee or any other way except by a formal vote of the committee as a committee, a quorum being present, if anybody insists on the rule” (italics added) (56 Cong. Rec. 6689).

Another member then objected:

“*This is the way this thing is done in almost every committee of the House at some time. A meeting is regularly called. The Chairman is present. The members of the committee begin to come in, one after another, some remaining and others*



asking to be recorded as present. Finally the vote shows that a quorum is present though actually a quorum may not be physically present. The point of no quorum is not made in the committee and the business of the committee is proceeded with. According to the committee records, a quorum is physically present. That evidence of the record ought not to be assailed in this body, but should be regarded as final. We do business in the House and Committee of the Whole every day without a quorum, but a quorum is presumed to be present . . .

"The Speaker: Now it may be true and I have no sort of doubt it is absolutely true . . . that this process of one coming in and another dropping out goes on in these committees. That is all right as nobody raises the point, but when the point is raised you have to consider it according to the rule . . . When the point is raised you have got to have a quorum acting as a quorum" (italics added) (56 Cong. Rec. 6689).

This statement did not satisfy the various objections but the matter was concluded by this ruling of the Speaker of the House:

" . . . My mind is made up and it will never be changed, unless the House votes to overrule my decision" (56 Cong. Rec. 6690).

Accord: III Hinds' *Precedents*, Section 1774 cited in Jefferson's *Manual*, Section 409; *Rules and Manual of the House of Representatives* (1947); June 17, 1922, 62 Cong. Rec. 8928; August 20, 1912, 48 Cong. Rec. 11399; *Legislative Reorganization Act of 1946*, Part 3, Section 133 (d).

Similarly, it is the rule in the various state legislative bodies that a multiple member committee can perform no valid act unless a quorum is present. *Ralls v. Wyand*, 40 Okl. 323, 388; *State ex rel. Stanford v. Ellington*, 117

N. C. 158; *Questions Submitted to Justices of the Supreme Judicial Court of Maine*, 70 Me. 570, 588-9. In cases involving judicial tribunals which consist of more than one Judge the question of what constitutes "the court" frequently depends on what constitutes a quorum. Three Judge statutory Courts sitting under the authority of 28 U. S. C. § 380 and 380a have no jurisdiction and can hear no application unless a quorum of the Justices of said Court are actually sitting. *Avrshire Collieries Corp. v. U. S.*, 311 U. S. 132; *Stratton v. St. Louis Southwestern Ry. Co.*, 282 U. S. 10; *Cumberland Telephone & Telegraph Co. v. Louisiana Public Service Commission*, 260 U. S. 212; *Ex Parte Metropolitan Water Co.*, 220 U. S. 539; *Baltimore & Ohio Railroad Co. v. Lambert Run Coal Co.*, 267 F. 776 (C. C. A.). In none of these cases is there a suggestion that the presence of a quorum at some earlier time or during a prior hearing or argument invests the Court with a competency to hear a subsequent case irrespective of the actual presence of a quorum at that subsequent hearing.

The rule in State Courts and semi-judicial bodies is the same. *Ferguson v. Crittenden County*, 6 Ark. 479; *Trise v. Crittenden County*, 7 Ark. 159; *People v. Barbour*, 9 Calif. 230; *Jagger v. Coon*, 5 Mich. 31; *State of Missouri ex rel. Clark v. Sanders*, 69 Mo. App. 472; *West v. Burke*, 60 Texas 51; *Ex Parte Buistámerte*, 138 Texas C. R. 396; *Olson v. State Tax Commission*, 109 Utah 563; *State ex rel. Hughes v. King*, 27 N. C. 203.

One venerable decision holds:

"If two justices could not legally hold a court of Special Sessions, but took three to constitute such court, then the trial, conviction and commitment of the prisoner was absolutely void, for then the alleged court that tried and sentenced him was not a court, and the two justices who tried and sentenced him had no jurisdiction whatever, and the prisoner was and is unlawfully imprisoned." *In the Matter of*

*James Devin*, 21 *Howard's Practice Reports* 80 (New York 1860).

Authorities to the same effect in cases involving municipal boards, councils and similar bodies are numerous and only a geographical cross-section is here cited. *Joslyn v. County Commissioners of Franklin County*, 15 Gray (81 Mass. 567); *State v. Porter*, 113 Ind. 79; *City of Somerset v. Somerset Banking Co.*, 109 Ky. 549; *City of Bentwood v. Wheeling Railway Co.*, 52 W. Va. 465; *McLean v. City of St. Louis*, 222 Ill. 510; *Commonwealth v. Garney*, 217 Pa. 425; *Greene v. Goodwin Sand & Gravel Co.*, 129 N. Y. Supp. 709; *Reynolds County Telephone Company v. City of Piedmont*, 152 Mo. App. 361; *State v. Farrar*, 89 W. Va. 232.

More particularly, it has been held that untruthful testimony before a multiple member tribunal is not perjurious unless given before a quorum thereof.

The first time the problem arose in this country appears to have been in the case of *Conner v. Commonwealth*, 4 Va. Rep. 30 (2 Va. Cas. 30). The defendant in that case had been indicted for perjury, it being alleged that he had perjured himself before a Regimental Court of Enquiry. He sought a writ of error on the grounds that the indictment did not set forth that the defendant was properly examined as to the matters alleged in the indictment. This writ of error was allowed on the theory that the defendant could not be examined unless a quorum was present. As the Court stated (p. 33):

"It seems to the Court here that said judgment is erroneous in this, that it does not appear from the said indictment of what number of officers the said Court of Enquiry consisted . . . so as to enable the Superior Court to discern whether the said Court of Enquiry was or was not constituted according to Law."

In a case involving the similar crime of impeding and corrupting justice the same rationale is approved. *State of Vermont v. Freeman*, 15 Vt. 722, 727.

Later affirmation of the principles established by the foregoing cases are found in *Rex v. Allen* (1925), 1 D. L. R. 57 (Manitoba K. B.); *Rex v. Rulofson* (1908), 14 Can. C. C. 253; and *Regina v. Lloyd* (1887), 19 Q. B. D. 213.

In *Rex v. Allen*, *supra*, the precise issue involved in the instant case was raised. The defendant was charged with committing perjury. His testimony could constitute perjury only if two specified officials were present upon his examination. The evidence showed that the perjury was committed in the presence of only one of those officials, the other having left the room during the examination. The Manitoba King's Bench held that the absence of one of the officials, at the time of testimony in issue, was fatal to the prosecution. The circumstance that at some prior time a competent tribunal had been constituted did not affect the foregoing conclusion. *Rex v. Rulofson*, *supra*, and *Regina v. Lloyd*, *supra*, are to the same effect.

The most recent affirmation of the proposition that false testimony before a Congressional Committee is not perjurious unless given before a quorum appears in *Meyers v. United States* ( . . . F. 2d . . . ). In that case the majority opinion contains the following:

"On October 6, 1947, however, only two Senators were present at the hearing. Since they were a minority of the sub-committee, they could not legally function except to adjourn. For that reason the testimony . . . given on that day cannot be considered as perjury . . ."

The charge in the unreported case of *United States v. Stewart* (Dist. Ct., Dist. of Columbia, November 20, 1928, crim. no. 47138) relied upon by the United States Court of Appeals for the District of Columbia in its affirming opin-

ion and referred to in 6 Casnon's *Precedents*, § 345, is upon analysis authority for the petitioner rather than the Government.\*

The juxtaposition of that charge and the charge given herein reveals an identity of language in every respect which is here *unimportant* and a difference in language in the sole respect of consequence.

The difference in language between the two charges are as follows:

- a. Twice adding to the *Christoffel* charge a phrase which does not appear in the *Stewart* charge, to wit, "at the beginning of the afternoon session."
- b. Changing "but before the oath was administered" to "provided that before the oath was administered."

An analysis of the language in the *Stewart* charge conclusively demonstrates that an indictment for perjury will not lie unless it is proved that the oath was administered and the testimony taken in the physical presence of a quorum of the House Committee.

The *Stewart* charge clearly requires a quorum to be present at some time. The question remains, "When must the quorum be present?"

Assume *arguendo* that a quorum of a committee of the House of Representatives met and that the first order of business was the hearing of testimony.

\* The charge in that case read:

"In this case, the Committee being composed of fifteen, before there could be a meeting of the Committee there must have been present at least eight members of that Committee, physically in the Committee room."

If such a Committee so met, and thereafter during the progress of the hearing some of them left temporarily or otherwise, no question was raised as to the lack of quorum then the fact that the majority did not remain there, would not affect, for the purpose of this case, the existence of that Committee as a competent tribunal, but before the oath was administered, and before the testimony was given, there must have been as many as eight members of that Committee present."



The *Stewart* charge and all authorities recognize that before the committee could validly meet a quorum had to be actually and physically present. That circumstance being here assumed, one part of the *Stewart* charge hereinabove quoted is entirely unnecessary. Under the hypothesis it would not be necessary to charge as did Judge BAILEY in the *Stewart* case that "but before the oath was administered and before the testimony of the defendant was given there must have been as many as eight members of that committee present." By hypothesis the quorum existed at the time the witness assumed the chair.

Thus the appearance of these words in the charge must contemplate a situation where a committee meets and the first order of business is something other than the testimony of witnesses. Under such circumstances the language above noted would no longer be superfluous and its meaning becomes clear.

In the latter case, if a committee met and a quorum was actually physically present it would not affect the transaction of the committee's business if some members of that quorum left the room provided always that no point of lack of quorum was raised. However, if the committee advanced in its agenda and sought to take testimony from witnesses it could do so only if "before the oath was administered and before the testimony . . . was given" a quorum was present.

Viewed in this light the *Stewart* charge clearly means but one thing, namely, that perjury can lie only when the oath is administered and the testimony taken before an actual quorum of members of the committee.

To the question "When must the quorum be present?", there is another confirming answer. The *Stewart* charge states that "before the oath was administered and before the testimony of the defendant was given there must have been [a quorum] of that committee present." If by this

language it was meant to say that it was sufficient to have a quorum present at some time prior to the administration of the oath then the statement that a quorum had to be present before the testimony was taken is absolutely unnecessary. In the sequence of events every moment in time prior to the administration of the oath is also prior to the taking of testimony. The *Stewart* charge then is clear. Not only must a quorum be present before the oath is administered but *after* as well since a quorum must be present before the taking of testimony and this occurs after the administration of the oath.

This analysis of the language of the *Stewart* charge is confirmed by the very authority upon which the Government and the Appellate Court below rely. In 6 *Cannon's Precedents* of the House of Representatives, Section 345 appears the following:

“345. The case of Robert W. Stewart, continued.

In order to support a charge of perjury it must be shown that a quorum of the committee of investigation was present *at the time the offense was committed*” (p. 491). (Italics added.)

The time when the offense is committed is the time when the oath is administered and violated by false testimony.

The question posed herein, especially in view of the increased scope of Congressional investigation, is one of general importance, which this Court has not yet passed upon and which, it is respectfully submitted, should be clarified. In addition, as hereinafter appears, this case presents an important question relating to the due process clause of the Fifth Amendment to the United States Constitution, and to its application.

C. The presumption of innocence which attends upon the trial of any criminal charge overrides any presumption of continuance or of the regularity of official records; the latter presumptions are rebuttable

In holding that a hearing before a regularly convened Congressional committee ("appearing from the committee's record to be regularly conducted") cannot be impeached, the United States Court of Appeals for the District of Columbia stated "so much, we think, is required by a reasonable regard for the substance of things and by the respect courts owe to Congress." This language of the decision in effect affirms the conviction herein on the theory that the hearing before the Congressional committee is irrebuttably presumed to be regular.

Such was the theory of the Trial Court except that during the early part of the trial the presumption relied upon was a rebuttable one (R. 72-83). Finally, however, the Court ruled (R. 173-175) and charged (R. 259) in effect that the presumption was irrebuttable.

If the presumption relied upon was one of continuance then at best it must be regarded as rebuttable (*Lewis v. Hawkins*, 90 U. S. 119) and if the presumption was one of regularity of official conduct then reliance upon it is limited (IX Wignore *On Evidence*, § 2534) and it is likewise rebuttable (*Wilkes v. Dinsmon*, 48 U. S. 89; *New York Life Ins. Co. v. Gamer*, 303 U. S. 161; 170; *Hammond v. Hull*, 131 Fed. 2d 23, *cert. den.* 318 U. S. 777).

To the extent that the Trial Court ruled and the Appellate Court held that a "reasonable regard for the substance of things and . . . the respect courts owe to Congress . . . injures no private interest . . ." it erred. This Court has recently passed upon similar irrebuttable presumptions which in effect deny due process of law and has stricken them down. *Maggio v. Zeitz*, 333 U. S. 56. See

also *Oyama v. State of California*, 332 U. S. 633; *Bailey v. Alabama*, 219 U. S. 219, 223. The rationale of these decisions is that "a constitutional prohibition cannot be transgressed indirectly. . . ." In making the presumption herein irrebuttable the Court below stripped the petitioner of the constitutional protection inherent in the presumption of innocence,—a valuable private right.

If the presumption relied upon below was rebuttable, then 1) the presumption of innocence overcame it and 2) the proof herein previously alluded to should have been submitted to the jury in order to effect rebuttal.

The charge of the Trial Court and the affirmance of the Appellate Court result in a flagrant cancellation of the presumption of innocence. This Court should take cognizance of this assault upon a right protected by the Constitution and, it is respectfully submitted, grant the petition.

**D. A witness who is not a member of a Congressional committee has no standing before the committee to raise a point of lack of quorum**

The United States Court of Appeals for the District of Columbia has, to some extent, predicated its affirmance of the Trial Court's refusal to submit the quorum question to the jury on the mistaken notion that a witness who is not a member of the Congressional committee has standing at the time to question the regularity of the Committee's meeting. Thus, it ruled:

"We hold only that a hearing before a regularly convened Congressional committee, . . . cannot afterwards be impeached, for the benefit of a defendant who did not at the time question its regularity, by showing that a quorum was not in fact present when he gave false testimony" (*Christoffel v. U. S.*, Feb. 2d ). (Italics added.)

The Rules of the House of Representatives are the Rules of its standing committees (Rules of the House of Representatives, Rules and Manuals of the United States House of Representatives (1947)). Section 310 of Jefferson's *Manual, Rules and Manual of the United States House of Representatives* (1947), on the question of quorum, reads:

"And whenever, during business, it is observed that a quorum is not present, *any member* may call for the House to be counted, and being found deficient business is suspended (2 *Hats.* 125, 126)." (Italics added.)

Thus the rules applicable to the conduct of Congressional committee hearings endow members but not strangers to the body with standing to raise this or other matters of procedure (and see 56 Cong. Rec. 6689). Nor does the logic of the situation permit an attack on an official body from without. Indeed the Department of Justice in its brief filed with the Appellate Court below acknowledged that

"Congressional legislative bodies operate under parliamentary rules by which they themselves determine the validity of their own proceedings. Under the parliamentary procedure of the House of Representatives a meeting of the House or of a committee thereof once duly convened may continue to transact business and consider matters before it until recess or adjournment unless the absence of a quorum is officially noted by the chairman *upon the suggestion of a member* rising to a point of order or as the result of an official roll call" (*Christoffel v. United States*, No. 9788, in the United States Court of Appeals for the District of Columbia; Brief for Appellee, p. 6). (Italics added.)

It is proper to limit to members of a legislative body standing to raise such a point of order. Otherwise non-members of the body, not acquainted with the rules of the



body and ignorant of what constitutes a quorum, while testifying and simultaneously maintaining a perpetual mental inventory of the members of the committee present (perhaps differing from that of the Chairman or the Clerk of the Committee) would be in a position to challenge and indeed paralyze the regularity and conduct of committee hearings.

If as appears then a witness has no standing "At the time [to] question [a hearing's] regularity, by showing that a quorum was not in fact present when he gave false testimony," it follows that the predicate of the affirmance below falls.

In a decision of the United States Court of Appeals for the District of Columbia made two weeks preceding the affirmance and conviction herein, no such prerequisite to declaring the incompetency of a similar tribunal was noted. In *Meyers v. United States*, Fed. 2d , that Court held:

"On October 6, 1947, however, only two Senators were present at the hearing. Since they were a minority of the sub-committee, they could not legally function except to adjourn. For that reason the testimony given on that day cannot be considered as perjury . . . nor can appellant be convicted of suborning it."

The appellant there was not charged with perjury but with suborning perjury. There was no evidence that he was present at the hearings nor evidence that he or the alleged perjurer raised the point of lack of quorum. Nevertheless the Court of Appeals held that a minority of the sub-committee could not legally function.

E. The petitioner did not seek to impeach the committee hearings; had he attempted to do so, even by extrinsic evidence, it would have been proper in the defense of a criminal charge

The Trial Court did not base its charge or its refusal to permit the jury to pass upon the question of quorum on any theory of impeachment. This thesis was first projected by the Government on appeal and apparently there adopted. Under the ruling of the Trial Court, proof of the absence or presence of a quorum at the time in issue, whether by evidence which impeached committee records or indeed by the official records themselves, was not to be considered by the jury since the Trial Judge regarded such evidence as immaterial (R. 174, 259).

The petitioner sought to prove the absence of quorum not only by extrinsic evidence but by official records as well (Government Exhibit 6; R. 141).

The extrinsic evidence that was adduced upon the trial was not objected to by the Government, nor was it used to impeach the committee records or the hearings. No attack was then or subsequently made on the validity of the committee's report to the full House or on the Taft-Hartley Law which resulted.

The extrinsic evidence was used only to establish an adequate defense to a criminal charge. To the extent that committee hearings had to be impeached in order to establish the defense, it was permissible. Thus in *United States v. Walsh*, 22 Fed. 644, it was expressly held that the official record involved could be impeached by a special legal proceeding which is unfortunately not available in the instant case.

Moreover, to make such a defense available it was proper in a criminal prosecution to impeach committee records by proof *aliunde* said records.

The subject was discussed in the decision of *In the Matter of James Devine*, 21 Howard's Practice Reports 80 (N. Y. 1860). This was the case of a prisoner convicted of perjury. He was brought before the Court on a Writ of Habeas Corpus and there offered proof *aliunde* the Commitment to show that it was fatally defective because only two of the required three Justices were in attendance. Quoting from the decision:

"These proofs were objected to by the Assistant District Attorney on the ground that . . . I could not go behind the Commitment; . . . and [it] could not be impeached . . .

The questions then are—1st. Has the prisoner a right . . . thus to impeach the Commitment? . . .

I think the questions must be answered in the prisoner's favor . . ." (21 Howard's Practice Reports 80, 81).

The Court then asks:

"... how could the prisoner . . . show that the court was illegally constituted and had no jurisdiction, except in the way he has done by proof *aliunde* the writ or Commitment?

The prisoner could hardly estop himself from the right of showing *at any time*, and *at all times*, a total want of jurisdiction." (21 Howard's Practice Reports 80, 81.) (Italics added.)

Therefore, to the extent that the petitioner did not on trial seek to impeach the House Committee records, the United States Court of Appeals for the District of Columbia was in error in premising its decision on a misconception of fact. And to the extent that the petitioner utilized extrinsic evidence to impeach House Committee records, the Appellate Court was in error because said evidence was in aid of a defense to a criminal charge.

## POINT II

**The Court of Appeals for the District of Columbia committed reversible error in affirming the conviction of petitioner for violation of the District of Columbia Criminal Code.**

That the petitioner herein was indicted, tried, convicted and sentenced for a violation of Section 22-2501 of the District of Columbia Criminal Code is certain. The indictment was drawn under that local statute (R. 1), the docket entries reflect it (R. 28), the Trial Court so charged (R. 256) and the sentence imposed confirms it (R. 28, 272). In his motion to dismiss the indictment (R. 8-9), in his requests to charge (R. 267), and in his motion for acquittal and new trial (R. 23-24), and on appeal (*Christoffel v. U. S.*, F. 2d ), petitioner has consistently but unsuccessfully contended that the allegations of the indictment did not constitute a crime under Title 22, Section 2501 of the District of Columbia Criminal Code. Petitioner submits that in permitting this course of events to unfold the lower Courts committed serious, prejudicial and reversible error.

The United States Court of Appeals for the District of Columbia, in affirming, stated as follows:

"Appellant says the indictment was drawn and the sentence imposed under the perjury statute in the District of Columbia Code, D. C. Code (1940) § 22-2501. He contends that perjury before a Congressional committee is punishable only under the perjury statute in the Federal Criminal Code, 18 U. S. C. § 231 (now section 1621). Since this case was argued, this Court has decided the contrary." *Christoffel v. United States*, F. 2d

For this proposition, the United States Court of Appeals for the District of Columbia has cited *Meyers v.*

*United States*,  
 simply stated:

F. 2d

There the Court simply stated:

"In other words, appellant says only the federal perjury statute, 18 U. S. C. A. §§ 231, 232, was applicable. To accept the argument would be to overrule our decisions in *O'Brien v. United States*, 69 App. D. C. 135, 99 Fed. 2d 368 (1938) and *Bhrle v. United States*, 69 App. D. C. 304, 100 Fed. 2d 714 (1938), which we are not prepared to do." *Meyers v. United States*, *supra*, at

The District Code is a complete codification of the laws applicable to the District of Columbia. *Sims v. Rives*, 66 App. D. C. 24, 84 F. (2) 871, *cert. den.* 298 U. S. 682. The crime for which the petitioner stood trial and for which he was convicted and sentenced is part of it. The provisions of that Code which authorize the administration of an oath in the District of Columbia are numerous and specific.

The Corporation Counsel, his assistants, the Clerk of the District Court, the Police Court Clerks, the Police and Juvenile Court Judges, the Commissioners of the District, the Mayor, the Superintendent of Police, Notaries Public, the Police Department Trial Board Chairman and the Justices of the United States District Court are all specifically authorized by the District Code to administer oaths (Titles 1, 4, 11, District of Columbia Code).

Some of these officials also are otherwise authorized to administer other oaths. For instance the Judges and Clerk of the United States District Court are authorized by a law of the United States to administer oaths in addition to those authorized to them by the District Code (28 U. S. C. A. § 385; R. S. § 725; March 3, 1911).

Significantly, the members of Congress who enacted the District Code did not see fit to authorize the members of its own body to administer an oath under the District Code.



Since those authorized were all locally resident and official engaged, and Congressmen are not, the omission to authorize the latter would seem to be purposeful and reasonable.

Thus, though members of Congress are generally authorized to administer oaths (2 U. S. C. A. § 191), and though some members of Congress are specially authorized to administer oaths in Washington, D. C., and elsewhere (Resolution 111), none are authorized under the District Code. Congressmen are authorized by a "law of the United States" (2 U. S. C. A. § 231) but are not authorized "in any case in which the law authorized such an oath" (Section 22-2501 D. C. Crim. Code). This places Congressmen generally, and Chairman Hartley particularly, in the position of "one who had authority to administer certain oaths, but not the one in question" (48 *Corp. Jur.*, p. 856).

Under such circumstances an oath administered by Chairman Hartley could not fulfill the requirement of Section 22-2501 D. C. Crim. Code. "For . . . where the oath was administered by a person having no legal authority to do so . . . or by one who had authority to administer certain oaths, but not the one in question, or by one who had authority seemingly colorable, but no authority in fact, there can be no conviction, for the oath is altogether idle" (48 *Corp. Jur.*, p. 856).

This result is entirely proper when examined in the light of precedent and logic. *United States v. Curtis*, 107 U. S. 671; *United States v. Garcelon*, 82 F. 611 (D. Col.); *United States v. Doshen*, 133 F. 2d 757 (C. C. A. 3); *United States v. Mannion*, 44 F. 800 (D. C. D. Wash. N. D. 1890); *United States v. Law*, 50 F. 915 (D. C. W. D. Va. 1892); and *United States v. Bedgood*, 49 F. 54 (D. C. S. D. Ala. 1891), all substantiate this result.

Consequently it is apparent that the local perjury statute was not violated and the conviction thereunder was improper.

Moreover, it is clear that the tribunal before which the petitioner gave his testimony was a Committee of the House of Representatives. Its existence as a branch of the national legislature is provided for by the United States Constitution (Art. I, Sections 1, 2); and the Committee on Education and Labor is a standing Committee of the House by virtue of a provision of the Legislative Reorganization Act of 1946 (Title I, Part 2, Section 121 (a)). Matters properly within the jurisdiction of the House Committee, and the subject matter of the hearing wherein petitioner testified, are national in character and scope. The particular legislation which was sought to be and which was, in fact, amended was the National Labor Relations Act (R. 84).

The times, places and manner in which the Committee could sit, subpoena and swear witnesses and take testimony for the use of the Committee and the House of Representatives was regulated by enactment of that body (Government Exhibit 2; R. 32). In administering an oath the officer designated to do so acted not by direction of local law but rather federal law (Government Exhibit 2; R. 32). In taking an oath and giving testimony before this federal body in connection with proposed federal legislation, a witness does so in obedience to a subpoena authorized by the House of Representatives and not in pursuance of any law of the District of Columbia.

Thus a witness who gives testimony pursuant to a law or direction of the United States rather than a state or the District of Columbia is accountable for the truth of his testimony only to the United States and perjury committed in the course of such testimony is an offense exclusively against the public justice of the United States. *Thomas v.*

*Loney*, 134 U. S. 312; *Cahd v. United States*, 152 U. S. 211. This would follow regardless of where or in what part of the United States the testimony was taken. *Thomas v. Loney*, *supra*.

Section 231 of Title 18 of the United States Code, a federal statute, defines and prescribes punishment for the crime of perjury. There is no doubt that perjury committed before a federal body of the nature of a Congressional committee is punishable under that statute; there have been prosecutions for perjury committed under such circumstances. *United States v. Seymour*, 50 F. 2d 930 (D. C. Neb.); *United States v. Creech*, 21 Fed. Supp. 439 (D. C.); see *Cahd v. United States*, *supra*.

If perjury is committed before a federal body inquiring into matters federal in nature, the fact that perjury was committed within the geographical limits of the District of Columbia should not prevent the operation of the federal perjury statute any more than the fact that perjury was committed with respect to matters federal in nature within the geographical limits of the State of Nebraska, as was the case in *United States v. Seymour*, *supra*. This would seem to be true though both the District of Columbia and the State of Nebraska had local perjury statutes. The fact that the District of Columbia has a perjury statute does not prevent its statute and the federal statute from subsisting together. Each has its legal and its geographical application. The determination of the specific legal application of each statute is no longer a matter of controversy. As was stated by GRONER, C. J.:

"In *Johnson v. United States*, 225 U. S. 405, the Supreme Court said that the Criminal Code of the District and the Federal Criminal Code had definite territorial applications and they might subsist together; that the Federal Code embraces general legislation of general operation, while the District Code embraces local legislation of local operation; . . ."  
(*O'Brien v. United States*, 99 F. (2), at 369).

The crime of perjury committed before a Congressional committee is a crime under the Code which "embraces general legislation of general operation," and since there is no conflict respecting the operation of federal and local perjury statutes in the District of Columbia, the local statute may not be the basis for a prosecution under circumstances outlined hereinabove.

If perjury has been committed by the petitioner herein, he may be charged only with the commission of the same crime as could be charged anywhere else in the United States; to wit, violation of Title 18, U. S. C. A., Section 231.

"... the power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had. It is essential to the impartial and efficient administration of justice in the tribunals of the nation, that witnesses should be able to testify freely before them, unrestrained by legislation of the State, or by fear of punishment in the state courts. The administration of justice in the national tribunals would be greatly embarrassed and impeded if a witness testifying before a court of the United States, or upon a contested election of a member of Congress, were liable to prosecution and punishment in the courts of the State upon a charge of perjury, preferred by a disappointed suitor or contestant, or instigated by local passion or prejudice" (*Thomas v. Loney, supra*, at p. 375).

It is submitted then that in the instant case, the Government should have prosecuted the petitioner for his false testimony under oath only under the law making such conduct a crime against the United States. This crime is defined not by the local District of Columbia Criminal Code but by 18 U. S. C. A. § 231. The indictment should, therefore, have been dismissed prior to trial.

The decision of the United States Court of Appeals for the District of Columbia is in conflict with the decision of

this court in *Johnson v. United States*, 225 U. S. 405 and with its own decisions hereinabove referred to. Moreover, the decision was prejudicial to petitioner in that he was exposed to and received a sentence in excess of that provided for by the general federal perjury statute.

It is respectfully submitted, therefore, that the petition herein should be granted.

### POINT III

**Petitioner was deprived of his right to a fair and impartial trial as guaranteed by the Fifth and Sixth Amendments of the United States Constitution by the denial of motions made by petitioner under Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure.**

The original record herein will show that on February 12, 1948 the petitioner argued a motion before the District Court:

"1. For an order requiring the issuance of a subpoena to each of the prospective witnesses named in the supporting affidavit attached hereto and for the payment of the costs of issuance and service of such subpoenas as well as the fees to said witnesses, or in the alternative

2. a) for an order permitting defendant to take the deposition of said witnesses in Milwaukee at a date or dates fixed by said order and

b) For an order adjourning the trial date herein to an appropriate time."

The petitioner's supporting affidavit showed that the foregoing application was made pursuant to Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure; that the petitioner was indigent; that the testimony of the named witnesses was necessary and material to his defense. The petitioner therein also listed a number of witnesses resi-



dent in Milwaukee, gave their addresses and stated that these witnesses would give evidence to show that the petitioner was not and never had been a Communist and did not endorse, support or participate in the activities of the Communist Party. In addition, the affidavit stated that the witnesses were unable to defray the cost of voluntarily appearing in Washington, D. C., though served with subpoena, and that the petitioner was unable to meet such expenses. The supporting affidavit concluded by showing good faith and by announcing that the petitioner could not safely go to trial without such testimony.

The motion was in all respects denied.

The petitioner contends that the denial of this motion was such an abuse of judicial discretion as to warrant the granting of his petition and a reversal of the judgment of conviction.

Basic to the concept of a fair and impartial trial is the opportunity to present evidence. Where, as in the instant case, the accused stands charged with perjury respecting his political ideology, affiliation, and activity, the burden on the accused is at best a most difficult one. To disprove such a charge it is vital that the accused have the opportunity to present to the jury the testimony of those who worked with and lived with the accused to the end that said witnesses may testify to the intimate and unguarded actions and expressions of the accused. This is the sole method whereby an individual's political creed as implemented by activity and words, can be truthfully exposed and whereby a false charge relating thereto can be met.

The constitutional right to compulsory process guaranteed by the Sixth Amendment to the United States Constitution is of principal importance where, as here, wit-

\* Except that the petitioner's bond was reduced from Five Thousand to One Thousand Dollars. The money thus made available did not belong to the petitioner and the original record herein shows that permission to use the money to defray the costs of transporting witnesses was denied.

nesses were to be called to testify in connection with an unpopular cause. Social pressures and the temper of the times are frequently powerful restraints upon voluntary appearance.

The right to process guaranteed by the Constitution has little meaning where great distances come between prospective witnesses and the trial forum and where the party on whose behalf the prospective witnesses are to appear is without means. To cure this deficiency, Rule 17(b) of the Federal Rules of Criminal Procedure provides that a court or judge

"may order at any time that a subpoena be issued upon motion or request of an indigent defendant. . . .

If the court or judge orders the subpoena be issued *the costs incurred by the process and the fees of the witnesses* so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the Government."

It was under the authority of this Rule that the petitioner made the foregoing application. The Rule was also the basis for repeating the application during the course of trial (R. 233 and as further appears from the original record herein). The second application differed from the first only in the reduced number of witnesses whose presence was sought.

To the extent that both applications were denied the rulings rendered it impossible for the petitioner to present vital testimony on the most material issue raised by the Indictment. The opportunity to present evidence in his own behalf thus foreclosed resulted in a partial and unfair trial. Since the court below was vested with discretion in this matter and could thus at slight cost have insured a fair trial, it is respectfully submitted that it was guilty of abuse of discretion.

The Trial Court saw fit not only to deny the application to defray the costs of bringing said witnesses to the courtroom but also rejected the less satisfactory but acceptable alternative of providing for the taking of depositions. Indeed, in its discretion the Court could have ordered the transfer of the prosecution to the forum where the witnesses resided. Either of the alternatives applied for would have afforded the petitioner the opportunity of presenting evidence which was crucial to the determination of his guilt or innocence. In this connection it is not without significance that the jury deliberated for almost four hours before returning its verdict. One can but conjecture as to the turn of events if the jury had had presented to it the testimony excluded by the rulings hereinabove mentioned.

As this Court has remarked:

“To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship, to which he ought not to be subjected if the case can be tried in a court of his own jurisdiction.” *Hyde v. Shine*, 199 U. S. 62, 78.

The rulings below subjected the petitioner to this serious hardship, thereby denying to him a fair trial as guaranteed by the Fifth and Sixth Amendments to the United States Constitution.

## POINT IV

**The Court of Appeals for the District of Columbia committed reversible error in affirming the rulings of the Trial Court concerning the investigation of the jury panel by the Federal Bureau of Investigations.**

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the . . . district wherein the crime shall have been committed, . . ." (Constitution of the United States, Sixth Amendment).

"An impartial jury is one which is of that frame of mind at the beginning of the trial, which is influenced during the trial only, by legal and competent evidence produced during that trial against the defendant, and which bases its verdict upon the evidence connecting that defendant with the commission of that crime" (COOKE, J., in *People v. Lashkowitz*, 3 N. Y. S. 2d 98, 102).

Upon the trial herein counsel for the petitioner observed that counsel for the Government had a set of papers which contained the results of an investigation of the jury panel by the Federal Bureau of Investigation. This was raised as an objection to the jury panel and was the basis for an application for copies of said information. Both motions were denied (R. 29-30).

The Trial Judge made no effort to ascertain whether the charge made by counsel for petitioner on the trial hereof was true and the Government's counsel did not deny the charge.

The United States Court of Appeals for the District of Columbia has decided there is no merit to the contention that the panel should have been disqualified or that the Court should have permitted petitioner's counsel to examine the Government's notes (*Christoffel v. United*

*States*, F. 2d ). The basis for this decision is ~~that~~ there was no evidence that the Government made such an investigation.

The guarantee of an impartial jury makes it incumbent upon a Trial Judge to inquire whether in fact the Government has information about prospective members of the jury which is ~~not~~ available to the accused. A panel of jurors investigated by the Federal Bureau of Investigation upon the eve of trial cannot provide a jury which is free, uncoerced and impartial and which is influenced only by evidence produced on trial. *Sinclair v. United States*, 279 U. S. 749, 764; *United States v. McWilliams*, United States District Court, D. C., April, 1944 (unreported).

"The jury is an essential instrumentality—an appendage—of the court, the body ordained to pass upon guilt or innocence. Exercise of calm and informed judgment by its members is essential to proper enforcement of law" (*Sinclair v. United States*, *supra*, at 765).

The coercive effect of investigations by the Federal Bureau of Investigation upon a jury panel, many of whose members are Government employees within the scope of Executive Order #9835, the Loyalty Order, is too apparent where, as here, the jury had to pass on whether the Petitioner was a Communist.

To safeguard an impartial trial by jury and to establish equality between the Government and the accused, the Trial Judge should have inquired into the charge made by the petitioner. For the same reason the Court of Appeals should have set aside the conviction herein.

This failure to do so raises a question of general importance relating to the Fifth and Sixth Amendments of the Constitution which has never been but should be decided by this Court.



## POINT V

**It was error for the Trial Court to refuse to permit petitioner to read to the jury the balance of an exhibit previously introduced by the Government and admitted over objection.**

The transcript of the petitioner's testimony before the Congressional committee was offered by the Government upon the trial herein "to prove the testimony [of] the defendant" (R. 78). Objection to the offer was then and there made on the grounds that the committee before whom the transcript was made was sitting without a quorum and therefore not competent (R. 78-81, 119-138). The transcript was nevertheless received in evidence as Government's Exhibit 6 (R. 141).

Thereafter, as appears from the original record, the Government read to the jury from the transcript. Subsequently, as similarly appears, the petitioner sought to read to the jury from the transcript and permission was denied.

In thus denying the petitioner the right to read from an exhibit already in evidence, especially after the Government had read from said exhibit, the Trial Court departed from the accepted and usual course of judicial proceedings and this ruling requires reversal of the judgment.

It has been the long recognized rule in all courts that when one party offers or reads from a portion of a document his opponent may introduce or read the remainder, provided it is relevant to the issues on trial and an aid to the proper understanding of what has already been received (VII Wigmore *On Evidence*, § 2113).

This rule has received judicial approval by this Court in *Tappan v. Beardsley*, 77 U. S. 427, *Sheatz v. Markley*, 249 Fed. 315, *cert. den.* 247 U. S. 518, and many other deci-

sions, as well as by the various Circuit Courts of Appeal including that of the District of Columbia (*Herfurth, Jr., Inc., et al. v. U. S.*, 85 F. 2d 719; *College and Foods Products Co. v. London Packing Co., et al.*, 65 F. 2d 883; *Grobelny v. T. W. Cowen, Inc.*, 151 F. 2d 810, 813). Since the petitioner proposed to read from his own testimony in aid of explaining and understanding what had previously been read therefrom, the ruling in the Trial Court was a departure from the foregoing precedents. This Court should therefore review and reverse the judgment herein.

### CONCLUSION

The petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the District of Columbia to review its judgment.

Respectfully Submitted,

O. JOHN ROGGE,  
*Attorney for Petitioner.*

HERBERT J. FABRICANT,  
MURRAY A. GORDON,  
ROBERT H. GOLDMAN,  
*Of Counsel.*

---

Supreme Court of the United States

No. 528.

ARTHUR J. GAY AND OTHERS

— — — — —  
UNITED STATES OF AMERICA,

---

BRIEF FOR PETITIONER.

---



# I N D E X

PAGE

Opinions Below .....	1
Jurisdiction .....	1
Specifications of Errors .....	2
Statutes and Resolutions Involved .....	2
Statement .....	2
Summary of Argument .....	3
POINT I—The Court of Appeals for the District of Columbia committed reversible error in affirming the ruling and charge of the Trial Court concerning the competency of the House Committee at the time the petitioner was sworn and testified .....	3
POINT II—The Court of Appeals for the District of Columbia Circuit committed reversible error in affirming the conviction of petitioner for violation of the District of Columbia Criminal Code .....	10
POINT III—The petitioner was deprived of this right to a fair and impartial trial as guaranteed by the Fifth and Sixth Amendments of the United States Constitution by the denial of motions made by petitioner under Rules 17(b) and 15(a) of the Federal Rules of Criminal Procedure .....	11
POINT IV—The Court of Appeals for the District of Columbia Circuit committed reversible error in affirming the rulings of the Trial Court concerning the investigation of the jury panel by the Federal Bureau of Investigation .....	11
Conclusion .....	14



## TABLE OF CASES CITED

	PAGE
Commonwealth v. Whittaker, 131 Mass. 224	6
Crawford v. United States, 212 U. S. 183	12, 13
Dalton v. United States, 154 F. 46	7
Field v. Clark, 143 U. S. 649	4
Fleischman v. United States, App. D. C., April 8, 1949, No. 9852	8, 9
Francone v. Southern Pac. Co., 145 F. 2d 732	12
Frazier v. United States, 93 L. Ed. 175	13
Heard v. State, 95 Tex. Crim. 530	7
People v. Scott, 22 Cal. App. 54	7
Sinclair v. United States, 279 U. S. 263	8
State v. Roswell, 153 Mo. App. 338	7
State v. Sanford, 44 N. M. 66	7
State v. Shelley, 166 Mo. 616	7
State v. Wiedenfeld, 229 Wis. 563	7
United States v. Ballin, 144 U. S. 1	4, 5
Walton v. State, 71 Ark. 398	6

## OTHER AUTHORITIES CITED

2 U. S. C. § 192. (R. S. Section 102, as amended, 52 Stat. 942)	8
6 Cannon's Precedents of the House of Representa- tives, § 345; p. 491	6
Title 22, Section 2501, District of Columbia Code	3

IN THE  
**Supreme Court of the United States**

OCTOBER TERM—1948

**No. 523**

**HAROLD ROLAND CHRISTOFFEL,**

*Petitioner,*

*v.*

**UNITED STATES OF AMERICA.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF FOR PETITIONER**

**Opinions Below**

The opinions of the District Court are unreported. The opinion of the Court of Appeals (R., 275-277) is reported at 171 F. 2d 1004.

**Jurisdiction**

The basis for this Court's jurisdiction is set forth in the petition for writ of certiorari herein, at page 9.

## Specifications of Errors

The specifications of error are set out in the brief in support of the petition for writ of certiorari herein (pp. 17-19) and in the petition (pp. 11-12).

## Statutes and Resolutions Involved

The statutes and resolutions involved are set forth in the petition herein at pages 9-11.

## Statement

This brief is intended only as a supplement to the brief filed by the petitioner in support of his petition herein. A complete and detailed statement of the matter involved in this review is to be found in the petition herein at pages 2-8.

In its prior brief opposing the petition for a writ of certiorari, the *United States* left the impression that the "petitioner in effect admitted \* \* \* that he had committed perjury" (*Brief for the United States in Opposition*, p. 6, n. 1).

The petitioner did stipulate below to omit from the Joint Appendix all portions of the typewritten trial transcript relating to the question of whether he gave false and perjurious testimony before a Congressional Committee. This stipulation was entered into to minimize the financial burden of the petitioner and in deference, as well, to the rule of the Court of Appeals for the District of Columbia Circuit proscribing the printing of unnecessary portions of the record and in further deference to the rules of law and experience that a jury verdict will not be reversed where there is some evidence in the record to support it.

Mainly because of the expenses involved in printing an additional brief.

However, the original transcript reveals that the petitioner, upon the trial, actively opposed the charge of perjury on the merits. Indeed, but for the ruling denying the petitioner the right to present the testimony of numerous witnesses, or, in the alternative, to take their depositions (See *Brief in Support of Petition*, pp. 49-52) the petitioner would have opposed the charge of perjury much more completely and, in his view, successfully. If, as a result of the instant review a new trial is granted, petitioner will again oppose the charge of perjury on the merits.

### Summary of Argument

The Court is respectfully directed to the summary of argument which appears in the brief in support of petition for writ of certiorari at pages 19-21.

### POINT I

**The Court of Appeals for the District of Columbia committed reversible error in affirming the ruling and charge of the Trial Court concerning the competency of the House Committee\* at the time the petitioner was sworn and testified.**

At the trial and at all stages of this appeal, the argument of the *United States* has been the same. The Government has urged, and the Courts below have held, that the House Committee was a competent tribunal within the meaning of Title 22, Section 2501 of the District of Columbia Code (Perjury) because a quorum of the Committee convened at the appointed meeting hour. The rulings below have sus-

\* The Committee on Education and Labor, House of Representatives, 80th Congress, First Session, hereinafter sometimes referred to as "House Committee."

tained the proposition that once a quorum of a Committee has convened, the Committee is a competent tribunal for all purposes irrespective of the number of Committee members actually present at any given moment, provided no point of quorum has been raised. In advocating this position the *United States* has confused competency for legislative purposes and competency within the meaning of the applicable perjury statute.

Before this Court, as heretofore, the *United States* has relied principally upon the thesis announced in *United States v. Ballin*, 144 U. S. 1, and *Field v. Clark*, 143 U. S. 649. Those cases did not involve a perjury nor did they involve the competency of a tribunal within the meaning of a perjury statute.

Two questions only are presented: First, was the Act of May 9, 1890, legally passed and, second, what is its meaning. The first is the important question." (*United States v. Ballin*, 144 U. S. 1).

These cases then were civil ones involving an effort to invalidate duly enrolled legislation. Under such circumstances, the Court, mindful of the reliance placed on legislation ostensibly properly passed, and mindful of the need to secure rights vested as a result thereof, refused to peer beyond the last in a sequence of official records. Sound considerations of public policy support such a doctrine. It would seem quite proper to enjoin the overthrow of legislation duly enacted in accordance with prescribed rules and to refuse to permit reference to evidence *dehors* the official records for this purpose. The rights of too many people would thus become involved in *ex post facto* determinations and prejudice and uncertainty would surely follow.

However, no such public policy operates in the instant or similar criminal cases. For while "the Constitution empowers each House to determine its rules of proceedings" this Court has held that the Congress "may not by its



rules ignore constitutional restraints or violate fundamental rights". *United States v. Ballin*, 144 U. S. 1. Moreover, "there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained". *United States v. Ballin*, *supra*.

In the instant case "the result which is sought to be attained" is not a challenge to legislation duly enacted. No effort is made to invalidate the Taft-Hartley law. All that is sought to be accomplished is to protect "a fundamental right" of the petitioner in connection with a criminal charge.

Public policy supports rather than defeats the position of the petitioner. Assuming that the official records here disclose that a quorum of the House Committee convened, and assuming further, that the official records are silent as to the attendance record of Congressmen at the time of the testimony in issue, there are compelling reasons to inquire into the true state of affairs upon which the official record is silent. If a Congressional Committee were to be regarded competent, despite the fact that only a small fraction of a quorum was present at the time of the alleged perjury, the right of a solitary Congressman, unchecked by colleagues, to harass, badger and, indeed, prosecute a witness, would be upheld. It may hardly be urged that such a result is to be encouraged by this Court.

Nor is it true, in the petitioner's view, that a Committee is required to suspend its hearing as soon as it appears that less than a majority are present. It is only true that no charge of perjury can be levelled against a witness who has allegedly testified falsely in the absence of a quorum of a Committee.

The Committee and its aides are well placed to assume the burden of maintaining a quorum where perjury seems prospective. The chairman and the duly appointed clerks of and attendants to the Committee can easily check to in-

sure the presence of a quorum in such cases.\* This requirement can in no wise be regarded as an undue limitation on the activities of a Congressional Committee. Indeed the real limitation on such activity would be the absence of members of the Committee.

The competency of a Congressional Committee, insofar as perjury statutes require it, would seem to be clearly settled. Thus, it has been stated:

"In order to support a charge of perjury, it must be shown that a quorum of the Committee of investigation was present *at the time the offense was committed*." (6 Cannon's Precedents of the House of Representatives 345, p. 491). (Italics added.)

The "time the offense was committed" cannot be prior to the time that the oath is administered and violated by false testimony.

A contrary view would have to rest on some presumption. Such a presumption could be overcome either by proof or the presumption of innocence.

In criminal law the well-settled rule, where there is a conflict between the presumption of innocence and some other presumption is that the former prevails. Thus it has been held that the presumption of innocence prevails against the presumption of a woman's chastity (*Commonwealth v. Whitaker*, 131 Mass. 224; *Walton v. State*, 71

\* Compare the situation of a Congressional Committee and that of a Grand Jury. It appears that a Grand Jury cannot function in the absence of sixteen Grand Jurors.

"No evidence can be taken unless at least sixteen are present. It is important that the Secretary keep a record at each session of the number of Grand Jurors in attendance and the number voting on a Bill, and preserve his records in case a question arises as to whether a prerequisite number to wit, sixteen were in attendance." "If only sixteen Grand Jurors are present and one leaves the room, taking of evidence must be suspended until his return. The Foreman may temporarily excuse a member, provided the number remaining in attendance shall be at least sixteen." *Handbook for Federal Grand Jurors, Southern District of New York*, issued by Federal Grand Jury Association for the Southern District of New York, Second Edition 1939, p. 7.

Ark. 398), against the normal presumption of ownership arising from possession (*State v. Roswell*, 153 Mo. App. 338), against the presumption of delivery of an instrument arising from the fact of possession by the party to whom delivery must be made (*People v. Scott*, 22 Cal. App. 34), against the presumption that a check was made on the date and at the place stated therein (*State v. Wiedenfeld*, 229 Wis. 563), against the presumption that packages shipped from consignors to consignees contained articles which the latter expected to receive (*Heard v. State*, 95 Tex. Crim. 530), and against the presumption of continuance (*Dalton v. United States*, 154 F. 46).

In *State v. Shelley*, 166 Mo. 616, the presumption of innocence was measured against the presumption of official regularity. The defendant there was indicted for impersonating an elector. It was contended that since the name of the party impersonated appeared in the registration book as a voter and since the presumption is that registration proceedings, as official acts, were regular, the burden was on the accused to show that the party impersonated was not an elector. The Trial Court instructed the jury:

"That if they believed from the evidence that the name of (C, the party allegedly impersonated) appeared on the registration book \* \* \* offered in evidence, then this in fact is prima facie evidence that (C) was an elector. \* \* \*" (166 Mo. 616, 617).

The Court of Appeals of Missouri concluded otherwise:

"\* \* \* such a presumption cannot either overlook or overcome the presumption of innocence which in every case is to be regarded by the jury as a matter of evidence to the benefit of which party is entitled. Greenleaf 14th Ed. Sec. 34" (166 Mo. 616, 618).

Similarly, in cases involving the presumption of continuance, it has been held that " \* \* \* the presumption of the continuance of things is weaker than the presumption of innocence." (*State v. Sanford*, 44 N. M. 66, 78.9.)

Presumptions of regularity or continuance, in criminal cases, especially, cannot be substituted for proof. And in cases which arise from allegations of criminal misconduct before Congressional Committees the rule is clear. Thus when Harry F. Sinclair was convicted of a contempt of Congress and the Government argued that the pertinency of questions addressed to him was presumed, this Court went out of its way to disabuse the Government of the idea:

"Appellant earnestly maintains that the question was not shown to be pertinent to any inquiry the committee was authorized to make. The United States suggests that the presumption of regularity is sufficient without proof. But, without determining whether that presumption is applicable to such a matter, it is enough to say that the stronger presumption of innocence attended the accused at the trial. It was therefore incumbent upon the United States to plead and *show* that the question pertained to some matter under investigation" (*Sinclair v. United States*, 279 U. S. 263, 296-7). (Italics added.)

If, as is urged by the *United States*,\* the presumption relied upon is conclusive, it is in conflict with the Constitution of the United States.

A recent decision makes it abundantly clear that a quorum of a Committee must be present not at some period prior to but at the time of the alleged perjury. Thus, in a case involving a violation of 2 U. S. C. § 192 (R. S. Section 102, as amended, 52 Stat. 942) the Court of Appeals for the District of Columbia Circuit has held that the question of "whether a quorum of the Committee was *present* when those persons made their statements of non-compliance, was a material issue of fact which should have been submitted to the jury for decision" (*Fleishman v. United States*, App. D. C., April 8, 1949, No. 9852). (Italics added.)

\* See Brief for the United States, p.

*Fleischman v. United States, supra*, involved statements which allegedly constituted a contempt, but the decision therein squarely supports the rationale of the petitioner herein.

The United States has heretofore argued that no point of quorum having been raised at the hearing before the House Committee, no such point could be thereafter raised. *The Brief for the United States in Opposition*, at page 10 argues:

"The precedents of the House and Senate declare that when a quorum has been shown to be present and a session has legitimately begun to do business, the business accomplished before the lack of a quorum has been brought to the notice of the Chair cannot thereafter be challenged on that score."

The Government now concedes that the petitioner had no right to raise the issue of quorum at the hearing but persists in its argument that no person could raise the point after the Congressional hearing has been completed. The Congressional precedents do not confirm this view. Thus on May 17, 1918, the following dialogue took place in the House of Representatives:

"Mr. Carter of Oklahoma: I wanted to ask whether objection was made by anybody who attended."

"Mr. Houston: There was no objection made to the want of a quorum at any time; it was satisfactory to the Committee."

"Mr. Sanders: No point of no quorum was raised in the Committee."

"Mr. Saunders of Virginia: The point of no quorum was never raised in the Committee on Territories in this connection." 56 Cong. Rec. 6689.

Nevertheless, the Speaker ruled

"Now it may be true and I have no sort of doubt it is absolutely true \* \* \* that this process of one com-



ing in and another dropping out goes on in these Committees. *That is alright as nobody raises the point, but when the point is raised you have to consider it according to the rule \* \* \* when the point is raised you have got to have a quorum acting as a quorum.*" 56 Cong. Rec. 6689. (Italics added.)

Inasmuch as the petitioner, a stranger in the Congress, was powerless to raise the point of no quorum and since, as clearly appears, the point may be raised after the conclusion of the hearing, it follows that petitioner's challenge of the activity on the trial herein was timely and proper.

For the reasons set forth in the petitioner's brief in support of his petition for a writ of certiorari, as well as for the additional reasons herein set forth, it is respectfully submitted that the Court of Appeals for the District of Columbia Circuit committed reversible error.

## POINT II

**The Court of Appeals for the District of Columbia Circuit committed reversible error in affirming the conviction of petitioner for violation of the District of Columbia Criminal Code.**

The Court is respectfully referred to the discussion in the brief in support of the petition for writ of certiorari herein at pages 43-49.

### POINT III

The petitioner was deprived of his right to a fair and impartial trial as guaranteed by the Fifth and Sixth Amendments of the United States Constitution by the denial of motions made by petitioner under Rules 17(b) and 15(a) of the Federal<sup>e</sup> Rules of Criminal Procedure.

The Court is respectfully referred to the discussion on this Point in the brief in support of the petition for writ of certiorari herein at pages 49-52.

### POINT IV

The Court of Appeals for the District of Columbia Circuit committed reversible error in affirming the rulings of the Trial Court concerning the investigation of the jury panel by the Federal Bureau of investigation.

It has heretofore been indicated that counsel for the petitioner, at the trial, observed that the counsel for the *United States* had in his possession a set of papers containing the results of an investigation of the jury panel by the Federal Bureau of Investigation (*Brief in Support of Petition for Writ of Certiorari*, p. 53). A motion to disqualify the jury panel was denied (R., 29.30) despite the fact that the jury was to pass upon delicate questions of political ideology, and despite the fact that (as the original transcript shows) the jury panel and the jury, as empanelled, included Government employees subject to Executive Order No. 9835.

It has heretofore been urged that such a panel could hardly produce an impartial jury in a case of this character. The jury herein was aware throughout that it was called upon to decide a conflict between a Congressional Committee (some members of which actually testified) and the petitioner. In other words, here was a conflict wherein the prestige, if not the credibility, of representatives of the Government was juxtaposed to that of the petitioner. Here, if ever, is the classic example of jurors in the employ of the Government being confronted with the necessity of deciding between the Government and a citizen. Inasmuch as Communism (and all it connotes *vis a vis* the Government of the United States) was the issue, it is apparent that Government employees, subject to loyalty inquisitions, were left to decide a significant question involving a clash of opposite political ideologies.

The Government employee jurors were thus not only passing judgment in a case where their employer was a party—a circumstance which would disqualify a juror for cause at common law (*Crawford v. United States*, 212 U. S. 183; *Francone v. Southern Pac. Co.*, 145 F. 2d 732, 733)—but they were left to determine innocence or guilt within the context of a situation wherein the Government employee juror must necessarily pay heed to the risk that his decision would affect his loyalty status.

Of late years, the Government is using its power as never before to pry into their lives and thoughts upon the slightest suspicion of less than complete trustworthiness. It demands not only probity but unquestioning ideological loyalty. A government employee cannot today be disinterested or unconcerned about his appearance of faithful and enthusiastic support for government departments whose prestige and record is, somewhat, if only a little, at stake in every such prosecution. And prosecutors seldom fail to stress, if not to exaggerate, the importance of the case before them to the whole

social, if not the cosmic order. Even if we have no reason to believe that an acquitting juror would be subjected to embarrassments or reprisals, we cannot expect every clerk and messenger in the great bureaucracy to feel so secure as to put his dependence on the Government wholly out of mind. I do not doubt that the government employees as a class possess a normal independence and fortitude. But we have grounds to assume also that the normal proportion of them are subject to that very human weakness, especially displayed in Washington, which leads men to " \* \* \* crook the pregnant hinges of the knee where thrift may follow fawning." Jackson J., dissenting in *Frazier v. United States*, 93 L. Ed. 175 184, 185.

The fact that there were Government employees in the jury panel herein, coupled with the undenied charge that there was an FBI investigation of the panel, is sufficient to have required its disqualification. As this Court has stated: "

"It need not be assumed that any cessation of that employment would actually follow a verdict against the government. It is enough that it might possibly be the case; and the juror ought not to be permitted to occupy a position of that nature to the possible injury of a defendant on trial, *even though he should swear he would not be influenced by his relations to one of the parties to the suit in giving a verdict.* It was error to overrule the defendant's challenge to the juror." (*Crawford v. United States*, 212 U. S. 183, 197. (Italics supplied.)

The fair and impartial jury that the Constitution requires is incompatible with the inclusion of Government employees on a jury panel from which jurors are to be selected for a trial involving the issues presented herein.

The failure to disqualify the jury panel below resulted in a trial of the petitioner by a jury which could not have measured up to the constitutional requirement.

## CONCLUSION

For all of the reasons urged in the brief in support of the petition for a writ of certiorari and for all the reasons urged herein, the conviction and judgment should be reversed and remanded for a new trial.

Respectfully submitted,

O. JOHN ROGGE,

*Attorney for Petitioner.*

HERBERT J. FABRICANT,

MURRAY A. GORDON,

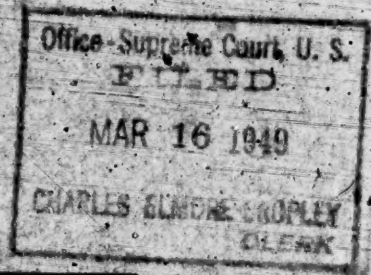
ROBERT H. GOLDMAN,

*Of Counsel.*



LIBRARY  
SUPREME COURT, U. S.

No. 528



*In the Supreme Court of the United States*

OCTOBER TERM, 1948

HAROLD ROLAND CHRISTOFFEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE DIS-  
TRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

# INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	4
Argument	9
Conclusion	16

## CITATIONS

### Cases:

<i>Field v. Clark</i> , 143 U. S. 649	12
<i>Husty v. United States</i> , 282 U. S. 694	16
<i>Lee v. United States</i> , 91 F. 2d 326, certiorari denied, 302 U. S. 745	16
<i>Mamaux v. United States</i> , 264 Fed. 816	14
<i>McKee v. Johnston</i> , 109 F. 2d 273, certiorari denied, 309 U. S. 664	13
<i>Meyers v. United States</i> , No. 467, this Term, certiorari denied February 14, 1949	13
<i>Neilling v. United States</i> , 142 F. 2d 551	16
<i>Seymour v. United States</i> , 77 F. 2d 577	13
<i>Sinclair v. United States</i> , 279 U. S. 749	14, 15
<i>Smith v. Mississippi</i> , 162 U. S. 592	14
<i>Sonizinsky v. United States</i> , 300 U. S. 506	16
<i>Tinkoff v. United States</i> , 86 F. 2d 368, certiorari denied, 301 U. S. 689	16
<i>United States v. Ballin</i> , 144 U. S. 1	10, 11
<i>United States v. Gason</i> , 39 F. Supp. 731	13
<i>United States v. Hutcheson</i> , 312 U. S. 219	13
<i>United States v. Smith</i> , 286 U. S. 6	11
<i>Williams v. United States</i> , 168 U. S. 382	13
<i>Wolf v. United States</i> , 292 Fed. 673	14

### Constitution:

Art. 1, § 5, cl. 1	10
Art. 1, § 5, cl. 2	10

### Statutes:

18 U.S.C. (1946 ed.) 231, Criminal Code, § 125 (now 18 U.S.C. 1621)	3
18 U.S.C. (1946 ed.) 232, Criminal Code, § 126 (now 18 U.S.C. 1622)	3
22 D. C. Code (1940) 2501	3, 5

Miscellaneous:	Page
Cannon's <i>Procedure in the House of Representatives</i> (1939), pp. 277-278	10
Federal Rules of Criminal Procedure, Rule 7(c)	13
1 <i>Hinds' Precedents</i> , § 563	11
4 <i>Hinds' Precedents</i> , §§ 2927, 2961, 4598, 4599	11
Riddick, <i>Congressional Procedure</i> (1941), p. 229	10
Rules and Manual of the United States House of Representatives, § 738 (f)	9

# In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 528

HAROLD ROLAND CHRISTOFFEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE DIS-  
TRICT OF COLUMBIA CIRCUIT

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The opinion of the District Court (R. 10) deny-  
ing the motion to dismiss the indictment is not  
reported. The opinion of the Court of Appeals  
(R. 275-277) has not yet been reported.

### JURISDICTION

The judgment of the Court of Appeals was  
entered November 22, 1948 (R. 278), and a peti-  
tion for rehearing was denied December 14, 1948

(R. 284). On January 5, 1949, by order of the Chief Justice, the time for filing a petition for a writ of certiorari was extended to January 28, 1949 (R. 286), on which day the petition was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45 (a), F. R. Crim. P.

#### QUESTIONS PRESENTED

Petitioner was convicted of perjury committed while testifying before the Committee on Education and Labor of the House of Representatives during that Committee's afternoon session on March 1, 1947. The principal questions presented are:

1. Whether the trial court was correct in charging the jury that, if a quorum of the Committee (a majority) met at the beginning of the afternoon session and no question was raised during the session as to a lack of a quorum, the fact that a majority did not actually remain throughout the session did not affect the Committee's competence to administer oaths and take testimony.
2. Whether petitioner should have been indicted under the federal perjury statute rather than under the local District of Columbia statute.
3. Whether the trial court was correct in refusing to dismiss the jury panel on the basis of defense counsel's allegation that the Government



had had an investigation of the panel made by the Federal Bureau of Investigation.

#### STATUTES INVOLVED

The federal perjury statutes (18 U.S.C. (1946 ed.) 231 and 232, Crim. Code, §§ 125, 126 (now 18 U.S.C. 1621 and 1622)), provided, as of the dates involved here:

SEC. 231. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than \$2,000 and imprisoned not more than five years.

SEC. 232. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in section 231 of this title prescribed.

The District of Columbia perjury statute (22 D. C. Code (1940), 2501) provides:

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to be administered, that he will testify, declare, de-

pose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section.

#### STATEMENT

On September 3, 1947, a six-count indictment was filed in the District Court for the District of Columbia charging petitioner with the commission of various perjuries while testifying before the Committee on Education and Labor of the House of Representatives. The indictment alleged generally that the Committee was engaged on March 1, 1947, in conducting hearings to inquire into the causes of labor disputes, work stoppages and strikes, and the connections those engaged in such activities might have with subversive organizations; that it became material to take sworn testimony to determine whether certain labor organizations in Milwaukee, Wisconsin, were controlled by members of the Communist Party or by persons committed to Communist doctrines

and purposes; that since petitioner had been in a dominant position in these labor organizations it became material to determine his connection with Communist organizations; and that petitioner appeared and testified under oath. The six counts of the indictment charged respectively that petitioner testified falsely and wilfully that he had never been a member of the Communist Party, that he had never been a member of the Communist Political Association, that he had never worked with either of those organizations, that he had never participated in the activities of the Communist Party, that he had never supported Communists or indorsed Communism, and that he did not know Ned Sparks or Fred Blair, both allegedly former heads of the party in Wisconsin. (R. 1-8.) The heading of the indictment referred to Section 2501 of Title 22 of the D. C. Code, *supra*, the District of Columbia perjury statute (R. 1).

Before trial, petitioner moved that the indictment be dismissed, the chief ground being that, since the alleged offense pertained to the Federal Government, the prosecution should have been brought under the federal perjury statute rather than under the District of Columbia perjury statute. The court denied the motion, holding that the indictment properly charged an offense under the federal statute, regardless of the statute in the mind of the indictment's drafters, and that

in any case there is no essential difference between the two statutes (R. 8-10).

Petitioner does not challenge the sufficiency of the evidence to prove that he testified falsely before the Committee, and that evidence has not been included in the printed record. Consequently, we do not stop to summarize it here.<sup>1</sup>

The Government presented evidence at the trial to show that the Committee was regularly constituted and that it was composed of 25 members (R. 30-32). The Committee clerk who took the roll at the afternoon session on Saturday, March 1, 1947, testified that 14 members of the Committee were present when that session opened shortly after 2:00 p.m. (R. 32-38); that the Committee adjourned at 5:25 p.m. (R. 34); that petitioner's testimony was given during the latter part of the session (R. 37, 49-52); and that he was not certain how many members were still present when petitioner was sworn and testified (R. 42, 69), but that at no time during the session did any member suggest the lack of a quorum (R. 39). The Chairman of the Committee and 12 other members testified that they were present at the beginning of the afternoon session (R. 86, 164, 181, 185, 191, 192, 198, 205, 208, 212, 219, 224, 229). The Chairman also testified that there was

---

<sup>1</sup> In a stipulation filed in the court below petitioner in effect admitted that there was substantial evidence to prove that he had committed perjury (R. 272-273).

no suggestion during the session of a lack of a quorum (R. 112-113).

Throughout the trial, defense counsel insisted that the Government must prove that a quorum of the Committee was present at the exact time when petitioner was sworn and testified (see, e.g., R. 9, 33, 36-40, 120-138, 233-239). The court, however, ruled that the Government need only show that a quorum was present at the beginning of the session and that no point of lack of quorum was ever raised (R. 119). The court rejected instructions requested by the defense on this issue (R. 243-245), and instead instructed the jury as follows (R. 259-260):

And in this connection I wish to instruct you that the first thing that must be proved in this case is that the defendant was sworn to testify before a competent tribunal. If the tribunal before which he testified was not a competent tribunal, he cannot be convicted of perjury. The indictment alleges that the defendant testified before a meeting of the Committee on Education and Labor of the House of Representatives. To constitute a meeting of the Committee there must be present a majority of the Committee, and by present I mean actually physically present. In this case the Committee being composed of 25, before you could have a meeting of that Committee there must have been physically present at least 13 members of that Committee in the committee room. If such a Committee



so met, that is, if 13 members did meet at the beginning of the afternoon session of March 1, 1947, and thereafter during the progress of the hearing some of them left temporarily or otherwise and no question was raised as to the lack of a quorum, then the fact that the majority did not remain there would not affect, for the purposes of this case, the existence of that Committee as a competent tribunal provided that before the oath was administered and before the testimony of the defendant was given there were present as many as 13 members of that Committee at the beginning of the afternoon session. If you find that 13 members were not present at the beginning of the afternoon session on March 1, 1947, or have a reasonable doubt that they were, then of course you need go no further, because there would not be a competent tribunal in this case before which the testimony was given and your verdict should be not guilty.

The jury returned a verdict of guilty on all six counts of the indictment (R. 22, 268). The court granted a judgment of acquittal as to the second count (R. 22, 271), and imposed a general sentence of imprisonment for a period of two to six years on the other five counts (R. 23, 272).

In the Court of Appeals, counsel for petitioner stipulated that the only points "which will be made and argued by the appellant" would be the sufficiency of the indictment, the trial court's ruling on the quorum issue, and its refusal to dis-

miss the jury panel because of the alleged F.B.I. investigation of the panel members (R. 272-274). After the judgment had been affirmed (R. 278), a petition for rehearing was filed in which several new points were raised for the first time in the Court of Appeals: namely, the trial court's denial of a motion to transfer the cause from the District of Columbia to the Eastern District of Wisconsin, the denial of a defense request that certain witnesses be subpoenaed or their depositions taken at Government expense, and the trial court's refusal to permit defense counsel to read to the jury certain portions of the transcript of petitioner's testimony before the Committee (R. 282-283). The petition was denied without opinion (R. 284).

#### ARGUMENT

1. Petitioner's principal contention (Pet. 21-42) is that the trial court erred in ruling that the Committee was a competent tribunal within the meaning of the perjury statutes, no matter how many members were present at the exact time he took the oath and testified, so long as a majority were present at the beginning of the afternoon session and no member thereafter suggested the lack of a quorum.

Since the standing committees of the House of Representatives operate internally under the rules of the House itself, so far as applicable,<sup>2</sup>

<sup>2</sup> Rules of the House of Representatives, Rules and Manual of the United States House of Representatives, §738 (f).

we must look to the rules and practices of that body in order to determine whether the Committee was competent to act under the circumstances described. The Constitution prescribes that a majority of the House shall constitute a quorum to do business (Art. 1, § 5, cl. 1), but it establishes no method of determining the presence of a majority. On the contrary, it confers upon the House the authority to determine its own rules of procedure. Art. 1, § 5, cl. 2. Consequently, only the House itself can determine the presence or absence of a quorum of its members. It may prescribe any methods reasonably suited to ascertain the fact, *United States v. Ballin*, 144 U.S. 1, 6, and only by the use of those methods can the determination be made. Once a quorum has been attained at the beginning of a session and the House has begun to do business, its attention can be drawn to the fact that too many members have withdrawn by a member raising the point of no quorum, or by the Speaker of his own initiative, or by any vote which discloses on the face of it that too few are participating in the proceedings. The presence or absence of a quorum is then determined by a roll call or by the Speaker's own count. Riddick, *Congressional Procedure* (1941), p. 229; Cannon's *Procedure in the House of Representatives* (1939), pp. 277-278. The precedents of the House and Senate declare that when a quorum has been shown to be present and the session has legitimately begun to do business, the

business accomplished before the lack of a quorum has been brought to the notice of the chair cannot thereafter be challenged on that score. 4 *Hinds' Precedents*, §§ 2927, 2961, 4598, 4599; cf. 1 *Hinds' Precedents*, § 563. It is clear that the rules require a formal count by the House itself in order to settle the issue of presence or absence of a quorum.

The trial court could not substitute its own count in place of the formal count prescribed by the rules. Courts are bound to respect Congressional rules of procedure so long as they do not violate fundamental rights, *United States v. Smith*, 286 U.S. 6, 33; *United States v. Ballin*, 144 U.S. 1, 5, and certainly petitioner has not suggested that the alleged lack of a quorum affected his rights or occasioned any unfairness in the way the hearing was conducted. And it is clear that the court's instructions were in accord with the rules. The jury were told that, so long as they found that a quorum was present at the beginning of the session at which petitioner testified, they would have to find that the Committee continued legitimately in session until adjournment or until the lack of a quorum was brought to the notice of the chairman.

Petitioner cannot now resort to parole evidence (Pet. 27-28) to show a lack of a quorum which was not noticed in accordance with the proper procedure. *United States v. Ballin*, 144 U.S. 1,

4; cf. *Field v. Clark*, 143 U.S. 649, 667-680.<sup>3</sup> Nor is petitioner correct in his contention (Pet. 22-27) that the record of the hearings contains a roll call which showed on the face of it that a quorum was lacking at the time he testified. The chairman quite regularly called on each member of the committee present to ask if he desired to question the witness, and it is true that when petitioner was testifying less than a majority of the members were called upon in this manner. However, the witnesses agreed that this was not strictly intended as a roll call, for sometimes members who were actually present would not be called by name (R. 55-56, 90-91, 97).

In ultimate analysis, petitioner's elaborate argument fails because the Committee was properly operating under rules prescribed by the House of Representatives, because the House has the right to formulate its own rules, and because those rules cannot be challenged in the courts so long as they do not infringe upon fundamental rights.

2. Petitioner contends (Pet. 43-49) that the indictment should have been drawn under the federal perjury statute (*supra*, p. 3), rather than under that of the District of Columbia (*supra*, pp. 3-4). This same point was raised on

<sup>3</sup> There is no evidence that petitioner questioned the presence of a quorum at the Committee hearing, or indicated any unwillingness to testify in the absence of a quorum (R. 276).



petition for certiorari in the recent case of *Bennett E. Meyers v. United States*, No. 467, this Term, certiorari denied February 14, 1949, and we respectfully refer the Court to our Memorandum in Opposition in that case at pp. 9-11. As we pointed out there, the two statutes are substantially identical. The indictment in this case clearly states an offense under the federal statute, and the mere fact that the District of Columbia statute was cited in the caption is not ground for reversal unless prejudice is shown. *Williams v. United States*, 168 U.S. 382, 389; *United States v. Hutcheson*, 312 U.S. 219, 229; Rule 7(c), F. R. Crim. P. Petitioner claims there was prejudice because he was sentenced to a maximum of six years imprisonment whereas under the federal statute the maximum is five. But since petitioner was convicted on five separate counts<sup>4</sup> and was sentenced generally on all of them, the six-year term was well within the maximum that could have been imposed. *McKee v. Johnston*, 109 F. 2d 273, 275 (C.A.9), certiorari denied, 309 U.S. 664.

<sup>4</sup> Separate false statements are separately indictable even though all relate to the same general subject of inquiry, and all are made at the same hearing. *Seymour v. United States*, 77 F. 2d 577, 581 (C.A. 8); *United States v. Cason*, 39 F. Supp. 731, 734-735 (W.D. La.). It is obvious that the false statements ascribed to petitioner in the separate counts of this indictment, though all linked to the same general subject matter, each represented a different facet of his relations with the Communist Party.

3. While the jury panel was being examined, defense counsel stated to the court that he had noticed that the prosecuting attorneys had certain papers, apparently containing information about the prospective jurors, from the appearance of which he surmised that an F.B.I. investigation had been made of the panel. He asked that the panel be disqualified or that the information be made available to him. (R. 29-30.) The contention is now made that the refusal of this request constituted a denial of the constitutional right of trial by an impartial jury (Pet. 53-54).

Defense counsel offered nothing beyond his own speculation in support of his objection to the panel. The trial court was, therefore, clearly correct in refusing to disqualify the panel, since such objections must be supported by evidence of the truth of the allegations upon which they are based. *Smith v. Mississippi*, 162 U.S. 592; *Mamaux v. United States*, 264 Fed. 816, 819 (C.A. 6); *Wolf v. United States*, 292 Fed. 673, 678 (C.A. 6). Furthermore, even supposing that such an investigation had taken place, counsel offered not the slightest evidence, in fact he did not even allege, that any member of the panel was aware of it. There was, therefore, nothing to show that the panel was not impartial. Petitioner relies upon *Sinclair v. United States*, 279 U.S. 749, in which this Court held that any investigation of the jury which may reasonably tend to

destroy the equilibrium of the average juror is, even though the jury be unconscious of it, punishable as an act of contempt. 279 U.S. at 762-765. But here the issue was whether anything had actually happened to sway the panel from an impartial frame of mind. Of course, if evidence had been presented of some such offensive shadowing as occurred during trial in the *Sinclair* case, the trial court might well have exercised its discretion to quash the panel without waiting for proof that the jury had been affected. But defense counsel offered nothing more than a speculation, based upon his observance of certain papers in the possession of the prosecutor, that some sort of investigation had occurred. We think it clear that the court was correct in refusing to quash the panel, and we know of no authority which would require the prosecuting attorney to surrender his private notes to defense counsel.

4. Petitioner also contends that the trial court erred in denying his request that certain witnesses be brought from Wisconsin at Government expense or that their depositions be taken in Wisconsin (Pet. 49-52); and that it also erred in refusing to permit him to read the balance of the transcript of the Committee hearings to the jury after the Government had introduced it in evidence and read certain portions (Pet. 55-56). By stipulation (R. 272-274), petitioner abandoned these points in the Court of Appeals, and then

sought to revive them after decision by a petition for rehearing (R. 282-284). It is settled that the courts of appeals need not consider issues raised for the first time on petition for rehearing unless a clear miscarriage of justice would result. *Nailling v. United States*, 142 F. 2d 551 (C.A. 6); *Lee v. United States*, 91 F. 2d 326, 332 (C.A. 5), certiorari denied, 302 U.S. 745; *Tinkoff v. United States*, 86 F. 2d 868, 884 (C.A. 7), certiorari denied, 301 U.S. 689. And this Court will not consider issues not passed on in the courts of appeals. *Sonzinsky v. United States*, 300 U.S. 506, 514; *Hasty v. United States*, 282 U.S. 694, 701-702. There is nothing in the petition to show a clear miscarriage of justice.

#### CONCLUSION

The decision of the Court of Appeals is correct and no conflict of decisions is involved. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,  
*Solicitor General.*

ALEXANDER M. CAMPBELL,  
*Assistant Attorney General.*

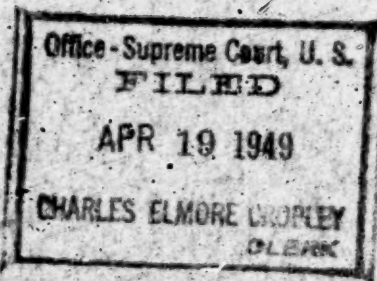
ROBERT S. ERDAHL,

JOSEPH M. HOWARD,

*Attorneys.*

MARCH 1949.

LIBRARY  
SUPREME COURT, U. S.



No. 528

---

**In the Supreme Court of the United States**

OCTOBER TERM, 1948

---

HAROLD ROLAND CHRISTOFFEL, PETITIONER

v.

UNITED STATES OF AMERICA

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

BRIEF FOR THE UNITED STATES

---



# INDEX

	Page
Opinions below .....	1
Jurisdiction .....	1
Questions presented .....	2
Statutes involved .....	3
Statement .....	4
Summary of Argument .....	10
Argument:	
I. The committee was a competent tribunal at the time petitioner testified .....	13
A. A quorum was present at the beginning of the session and no question of the presence of a quorum was thereafter raised .....	13
B. The official records of the Committee conclu- sively establish the presence of a quorum at the time petitioner testified .....	25
II. The general federal perjury statute and the District of Columbia perjury statute are substantially identi- cal, differing only in their territorial application and the penalties prescribed; since both apply in the District of Columbia and the sentence imposed was within the maximum permissible under either, it is immaterial in this case which statute petitioner violated .....	28
III. No valid challenge of the jury panel was made .....	32
IV. There was no error in the trial court's denial of peti- tioner's motion to subpoena witnesses at govern- ment expense or to take their depositions .....	34
Conclusion .....	37

## CITATIONS

### Cases:

<i>Ames v. Union Pacific Ry. Co.</i> , 64 Fed. 165, affirmed, 169 U. S. 466 .....	26
<i>Bartholomew v. United States</i> , 177 Fed. 902, certiorari denied, 217 U. S. 608 .....	32
<i>Blair v. United States</i> , 250 U. S. 273. ....	20
<i>Bozza v. United States</i> , 330 U. S. 160 .....	32
<i>Bryan v. United States</i> , No. 9852 (C. A. D. C.), decided April 8, 1949 .....	13
<i>Coleman v. Miller</i> , 307 U. S. 433 .....	21
<i>Crumpton v. United States</i> , 138 U. S. 361 .....	36

## Cases—Continued

	Page
<i>De Bara, In re</i> , 179 U. S. 316	31
<i>Duignan v. United States</i> , 274 U. S. 495	35
<i>Dupuis v. United States</i> , 5 F. 2d 231	36
<i>Field v. Clark</i> , 143 U. S. 649	26
<i>Fleischman v. United States</i> , No. 9851 (C. A. D. C.), decided April 8, 1949	13
<i>Flynn v. United States</i> , 50 F. 2d 1021	32
<i>Flynn v. United States</i> , 57 F. 2d 1044, certiorari denied, 287 U. S. 627	31
<i>Frazier v. United States</i> , 335 U. S. 497	33
<i>Gibson v. United States</i> , 53 F. 2d 721, certiorari denied, 285 U. S. 557	36
<i>Glasser v. United States</i> , 315 U. S. 60	33
<i>Goldsby v. United States</i> , 160 U. S. 70	36
<i>Hawkins v. United States</i> , 14 F. 2d 596, certiorari denied, 273 U. S. 740	31
<i>Husty v. United States</i> , 282 U. S. 694	35
<i>Johnson v. United States</i> , 225 U. S. 405	29
<i>Jones v. Hill</i> , 71 F. 2d 932	31
<i>Jordan v. United States</i> , 60 F. 2d 4, certiorari denied, 287 U. S. 633	20, 32
<i>Lee v. United States</i> , 91 F. 2d 326, certiorari denied, 302 U. S. 745	35
<i>Lerine v. Hudspeth</i> , 127 F. 2d 982, certiorari denied, 317 U. S. 628	31
<i>Martin v. Texas</i> , 200 U. S. 316	33
<i>McDowell v. United States</i> , 159 U. S. 596	20
<i>McKee v. Johnston</i> , 109 F. 2d 273, certiorari denied, 309 U. S. 664	31
<i>Nailling v. United States</i> , 142 F. 2d 551	35
<i>Nancy v. United States</i> , 16 F. 2d 872, certiorari denied, 274 U. S. 745	32
<i>Neely v. United States</i> , 2 F. 2d 849	32
<i>Penton v. Brown-Crummer Invest. Co.</i> , 222 Ala. 155	27
<i>Portland Gold Mining Co. v. Duke</i> , 191 Fed. 692	26
<i>Rice v. United States</i> , 7 F. 2d 319	32
<i>Ross v. Hudspeth</i> , 108 F. 2d 628	31
<i>Seymour v. United States</i> , 77 F. 2d 577	31
<i>Sinclair v. United States</i> , 279 U. S. 749	34
<i>Smith v. Mississippi</i> , 162 U. S. 592	33
<i>Sonzinsky v. United States</i> , 300 U. S. 506	35
<i>Tarrance v. Florida</i> , 188 U. S. 519	33
<i>Tinkoff v. United States</i> , 86 F. 2d 868, certiorari denied, 301 U. S. 689	35
<i>United States v. Ballin</i> , 144 U. S. 1	11, 18, 26
<i>United States v. Cason</i> , 39 F. Supp. 731	31

## Cases—Continued

	Page
<i>United States v. Hutcheson</i> , 312 U. S. 219	30
<i>United States v. Smith</i> , 286 U. S. 5	18
<i>United States v. Sposato</i> , 73 F. 2d 186	31
<i>United States v. Stewart</i> (D. C. D. C., November 20, 1928; unreported)	25
<i>United States v. Walsh</i> , 22 Fed. 644	27
<i>Warden of United States Penitentiary Annex v. De Londi</i> , 62 F. 2d 981	31
<i>Williams v. United States</i> , 168 U. S. 382	30
<i>Wong Yim v. United States</i> , 118 F. 2d 667, certiorari denied, 313 U. S. 589	23
Constitution:	
Art. I, § 5	15
Statutes:	
Criminal Code of 1909, c. 6, 35 Stat. 1111	28, 29
18 U. S. C. (1946 ed.) 231, Criminal Code § 125 (now 18 U. S. C. 1621)	3
18 U. S. C. (1946 ed.) 232, Criminal Code, § 126 (now 18 U. S. C. 1622)	3
Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 822, 825	13, 16, 23
22 D. C. Code (1940) 2501	3, 5, 28, 29
Miscellaneous:	
Annotation, <i>Admissibility of Parol or Extrinsic Evidence to Alter or Supplement Written Records of Local Legislative Bodies</i> , 98 A. L. R. 1229	27
6 Cannon's Precedents, § 345	25
6 Cannon's Precedents, § 655	17
8 Cannon's Precedents, §§ 2209, 2211-2212, 2220, 2249	23
8 Cannon's Precedents, § 2222, p. 38	18
8 Cannon's Precedents, § 2223	17
Cannon's <i>Procedure in the House of Representatives</i> (1939) pp. 277-278	16
Federal Rules of Criminal Procedure:	
Rule 7 (c)	30
Rule 15 (a)	36
Rule 17 (b)	36
H. Rep. No. 245, 80th Cong., 1st sess.	29
H. Res. No. 111, 80th Cong., 1st sess., 93 Cong. Rec. 1452, 1457	14, 21
1 Haynes, <i>The Senate of the United States</i> (1938), p. 358	16
1 Hinds' Precedents, § 563	27
4 Hinds' Precedents, § 2927	17
4 Hinds' Precedents, §§ 2961, 2962	27
4 Hinds' Precedents, § 4598	17
Luce, <i>Legislative Procedure</i> (1922), p. 48	16-17
Riddick, <i>The United States Congress Organization and Procedure</i> (1949), p. 296	15, 16

## Miscellaneous--Continued

	Page
Rules and Manual of the House of Representatives, 80th Cong. (1947):	
Rule X (a) (7)-----	13
Rule XI (f)-----	15
Rule XI (1) (g)-----	13
§ 141-----	24
Standing Rules of the Senate, Rule XXV (3)-----	16
4 Wigmore, <i>Evidence</i> (1940 ed.) § 1350-----	27

# In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 528

HAROLD ROLAND CHRISTOFFEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

## OPINIONS BELOW

The opinion of the District Court (R. 10) denying petitioner's motion to dismiss the indictment is not reported. The opinion of the Court of Appeals (R. 275-277) is reported at 171 F. 2d 1004.

## JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1948 (R. 278), and a petition for rehearing was denied on December 14, 1948 (R. 284). The petition for a writ of certiorari was filed on January 28, 1949, within the time as extended (R. 286), and was granted on March 28, 1949 (R. 287). The jurisdiction of



this Court is conferred by 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

#### QUESTIONS PRESENTED

Petitioner was convicted of perjury committed while testifying before the Committee on Education and Labor of the House of Representatives during that Committee's afternoon session on March 1, 1947. The principal questions presented are:

1. Whether the trial court was correct in charging the jury that if a quorum of the Committee (a majority) met at the beginning of the afternoon session and no question was raised during the session as to a lack of a quorum, the fact that a majority did not actually remain throughout the session did not affect the Committee's competence to administer oaths and take testimony.

2. Whether the giving of false testimony under oath before a congressional committee in the District of Columbia constituted a violation of the local District of Columbia perjury statute as distinguished from the federal perjury statute; and, if not, the elements of the offense being the same under both statutes, whether the general sentence imposed on petitioner, which was well within the maximum which might have been imposed under the federal statute on the five counts on which he was convicted, should be vacated.

3. Whether the trial court was correct in refusing to disqualify the jury panel and to permit

petitioner access to government counsel's notes on the basis of his counsel's unsupported allegation that the Government may have investigated the panel.

#### STATUTES INVOLVED

The federal perjury statutes (18 U. S. C. (1946 ed.) 231 and 232, Criminal Code, §§ 125, 126 (now 18 U. S. C. 1621 and 1622)), provided, as of the dates involved here:

SEC. 231. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than \$2,000, and imprisoned not more than five years.

SEC. 232. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in section 231 of this title prescribed.

The District of Columbia perjury statute (22 D. C. Code (1940); 2501) provides:

Every person who, having taken an oath or affirmation before a competent tribunal, officer, or person, in any case in which the law authorized such oath or affirmation to

be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath or affirmation states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury; and any person convicted of perjury or subornation of perjury shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. Any such false testimony, declaration, deposition, or certificate given in the District of Columbia, but intended to be used in a judicial proceeding elsewhere, shall also be perjury within the meaning of this section.

#### **STATEMENT**

On September 3, 1947, a six-count indictment was filed in the District Court for the District of Columbia charging petitioner with the commission of various perjuries while testifying before the Committee on Education and Labor of the House of Representatives. The indictment alleged generally that the Committee was engaged on March 1, 1947, in conducting hearings to inquire into the causes of labor disputes, work stoppages and strikes, and the connections those engaged in such activities might have with subversive organizations; that it became material to take sworn testimony to determine whether certain labor organizations in Milwaukee, Wis-

consin were controlled by members of the Communist Party or by persons committed to Communist doctrines and purposes; that since petitioner had been in a dominant position in these labor organizations it became material to determine his connection with Communist organizations; and that petitioner appeared and testified under oath. The six counts of the indictment charged respectively that petitioner testified falsely and wilfully that he had never been a member of the Communist Party, that he had never been a member of the Communist Political Association, that he had never worked with either of these organizations, that he had never participated in the activities of the Communist Party, that he had never supported Communists or endorsed Communism, and that he did not know Ned Sparks or Fred Blair, both allegedly former heads of the party in Wisconsin (R. 1-8). The heading of the indictment referred to Section 2501 of Title 22 of the D. C. Code, *supra*, the District of Columbia perjury statute, (R. 1).

Before trial, petitioner moved that the indictment be dismissed on the ground, *inter alia*, that since the alleged offenses pertained to the Federal Government, the prosecution should have been brought under the federal perjury statute rather than under the District of Columbia perjury statute. The court denied the motion, holding that the indictment properly charged offenses

under the federal statute, regardless of the statute in the mind of the drafters of the indictment, and that in any event there is no essential difference between the two statutes (R. 8-10).

In the course of the *voir dire* examination of the jury panel, the following requests by the petitioner's counsel and rulings by the trial court occurred (R. 29-30):

Mr. ROGGE [Petitioner's Counsel]. I notice Government counsel have an additional set of pages with reference to the jurors, which apparently contain additional information. I am asking for a copy of that so that we may have the same benefit of the same information that the Government has.

The COURT. That will be denied.

Mr. ROGGE. I also want to make this observation, that this was raised as an objection in the Sedition Case and the Judge disqualified that panel and we started with a new panel. If it is true, as I think from the sheets that I see in the Government's possession, that they have had an F. B. I. investigation made of the jury, I raise that, if Your Honor please, as an objection to this panel and I refer to the action Chief Justice Eicher took in the Sedition Case where, as I say, he disqualified the panel, even though that had been done without any of the members of the panel knowing anything about it, he nevertheless disqualified the panel.

The COURT. Very well. That is denied.



7

In a stipulation filed in the court below, petitioner in effect admitted that there was substantial evidence to prove that he had testified falsely before the Committee (R. 272-273), and he does not here challenge the sufficiency of the evidence for that purpose.

The Government presented evidence to show that the House Committee on Education and Labor was regularly constituted and that it was composed of 25 members (R. 30-32). The Committee clerk who took the roll at the afternoon session on Saturday, March 1, 1947, when petitioner appeared, testified that 14 members of the Committee were present when that session opened shortly after 2:00 p. m. (R. 32-38); that the Committee adjourned at 5:25 p. m. (R. 34); that petitioner's testimony was given during the latter part of the session (R. 37, 49-52); and that he was not certain how many members were present when petitioner was sworn and testified (R. 42, 69), but that at no time during the session did any member suggest the lack of a quorum (R. 39). The Chairman of the Committee and 12 other members testified that they were present at the beginning of the afternoon session (R. 86, 164, 181, 185, 191, 192, 198, 205, 208, 212, 219, 224, 229). The Chairman also testified that there was no suggestion during the session of a lack of a quorum (R. 112-113).

Throughout the trial, petitioner insisted that the Government must prove that a quorum of

the Committee was present at the exact time when he was sworn and testified (see, e. g., R. 9, 33, 36-40, 120-138, 233-239). He offered evidence tending to show that a quorum was not ~~present~~ at that time (see, e. g., R. 97, 103-104, 150.) The trial judge ruled, however, that the Government need only show that a quorum was present at the beginning of the session, provided that thereafter no point of lack of a quorum was raised (R. 119, 173-174). The jury was instructed as follows (R. 259-260):

And in this connection I wish to instruct you that the first thing that must be proved in this case is that the defendant was sworn to testify before a competent tribunal. If the tribunal before which he testified was not a competent tribunal, he cannot be convicted of perjury. The indictment alleges that the defendant testified before a meeting of the Committee on Education and Labor of the House of Representatives. To constitute a meeting of the Committee there must be present a majority of the Committee, and by present I mean actually physically present. In this case the Committee being composed of 25, before you could have a meeting of that Committee there must have been physically present at least 13 members of that Committee in the committee room. If such a Committee so met, that is, if 13 members did meet at the beginning of the afternoon session of March 1, 1947, and thereafter during the

progress of the hearing some of them left temporarily or otherwise and no question was raised as to the lack of a quorum, then the fact that the majority did not remain there would not affect, for the purposes of this case, the existence of that Committee as a competent tribunal provided that before the oath was administered and before the testimony of the defendant was given there were present as many as 13 members of that Committee at the beginning of the afternoon session. If you find that 13 members were not present at the beginning of the afternoon session on March 1, 1947, or have a reasonable doubt that they were, then of course you need go no further, because there would not be a competent tribunal in this case before which the testimony was given and your verdict should be not guilty.

The jury returned a verdict of guilty on all six counts of the indictment (R. 22, 268). The court granted a judgment of acquittal as to the second count (R. 22, 271), and imposed a general sentence of imprisonment for a period of two to six years on the other five counts (R. 23, 272).

In the Court of Appeals, counsel for petitioner stipulated that the only points "which will be made and argued by the appellant" would be the sufficiency of the indictment to charge an offense under the District of Columbia perjury statute, the trial court's ruling on the quorum issue, and its refusal to dismiss the jury panel.

because of the alleged F. B. I. investigations of members of the panel (R. 272-274). After the judgment had been affirmed (R. 278), a petition for rehearing was filed in which several new points were raised for the first time in the Court of Appeals, including the trial court's denial of a defense request that certain witnesses be subpoenaed at Government expense, or their depositions taken, and the trial court's refusal to permit defense counsel to read to the jury certain portions of the transcript of petitioner's testimony before the Committee (R. 282-283). The petition was denied without opinion (R. 284).

#### SUMMARY OF ARGUMENT

##### I.

The authority under which the Committee was operating at the time petitioner testified falsely under oath supports the trial court's instruction to the jury concerning the Committee's competency to administer oaths and take testimony. The House of Representatives prescribed, as it had the constitutional right to do, that the Committee should operate under the same rules as the House itself. And the parliamentary practice of the House, established by its rules and precedents, is that if a quorum is present at the beginning of the session, the business accomplished before the lack of a quorum is brought to the notice of the chair is not thereafter subject to challenge on that

score. This Court has held that it will not interfere with Congressional procedure so long as it does not violate any fundamental rights. *United States v. Ballin*, 144 U. S. 1. Petitioner has not shown that the alleged absence of an actual majority at the time he testified violated any of his fundamental rights. He intended to mislead not only the members present but the whole Committee and the House itself, for the transcript of his testimony was made available to them. Moreover, the Chairman of the Committee was acting at least in a *de facto* capacity when he administered the oath to petitioner.

If, however, it was a necessary part of the Government's case to prove that a majority of the members were actually present when petitioner testified, that fact was established by the official records of the Committee which noted a majority present and did not refer to any departures of members during the session. This official record is not subject to impeachment.

## II

It makes no difference in this case whether petitioner's perjuries violated the general federal perjury statute or the District of Columbia perjury statute. Both statutes are substantially identical except for the penalty provisions and the issues at the trial would have been the same under either. Petitioner's general sentence on five counts of two to six years' imprisonment was



within the maximum permissible under either statute.

### III

Petitioner's demand for the private notes which Government counsel had used in selecting a jury was unwarranted. The statement of petitioner's counsel that he thought an F. B. I. investigation of the jury panel had been made was purely speculative. He did not allege that an investigation had in fact occurred, let alone that it had tended to intimidate any juror. The trial court properly refused to disqualify the panel since petitioner did not sustain his burden as a moving party to introduce or offer evidence in support of his challenge.

### IV

Petitioner agreed in the Court of Appeals not to raise any points other than the foregoing three contentions. He raised for the first time in the petition for rehearing the contentions that the trial court had erred in denying his motion to take depositions or summon witnesses at Government expense, and in refusing to permit him to read part of an exhibit in evidence. Since it does not appear that the Court of Appeals passed upon those points, other than its action for denying without opinion the petition for rehearing, they should not be considered here. In any event, they are untenable on their merits since they involve matters which called for the exercise of discretion by the trial judge and there is no showing of

such abuse of discretion as would constitute reversible error.

## ARGUMENT

### I

THE COMMITTEE WAS A COMPETENT TRIBUNAL AT THE TIME PETITIONER TESTIFIED

A. *A quorum was present at the beginning of the session and no question of the presence of a quorum was thereafter raised.*—The trial court instructed the jury that if they found that a majority of the Committee on Education and Labor<sup>1</sup> were in attendance at the beginning of the afternoon session on March 1, 1947, during the course of which petitioner testified, and that at no time during the session was any question raised that a quorum was lacking, the Committee was a competent tribunal, regardless of whether or not a majority were physically present at the precise time at which petitioner took the oath and testified. By its verdict, the jury implicitly found those underlying facts. With those facts established, we submit that the competency of the Committee is not open to challenge.<sup>2</sup>

<sup>1</sup>The Committee on Education and Labor is a standing committee of the House of Representatives (Legislative Reorganization Act of 1946, c. 753, 60 Stat. 812, 822, 825; Rules X (a) (7), XI (1) (g), Rules and Manual of the House of Representatives, 80th Cong. (1947)).

<sup>2</sup>In *Fleischman v. United States* and *Bryan v. United States* (both decided by C. A. D. C., April 8, 1949, Nos. 9851 and 9852), convictions of making defaults by failing to produce records before the Committee on Un-American Activi-

The hearing was held pursuant to the Committee's authority to compel the attendance and sworn testimony of witnesses in connection with investigations relating to matters within its jurisdiction. H. Res. No. 111, 80th Cong., 1st sess., 93 Cong. Rec. 1452, 1457; R. 32.<sup>3</sup> The Commit-

tees of the House of Representatives were reversed because the trial judge had invaded the province of the jury in charging that "as a matter of law \* \* \* the members of the committee before whom the defendant appeared, pursuant to the subpoenas served on them, constituted a sufficient quorum to carry on the investigation." The instant decision is clearly distinguishable, for here it was left to the jury to find, under appropriate instructions, whether a majority of the Committee "did meet at the beginning of the afternoon session of March 1, 1947, and thereafter \* \* \* no question was raised as to the lack of a quorum" (R. 259).

<sup>3</sup> This resolution provided as follows:

*"Resolved, That the Committee on Education and Labor, acting as a whole or by subcommittee, is authorized and directed to conduct thorough studies and investigations relating to matters coming within the jurisdiction of such committee under rule XI (1) (g) of the Rules of the House of Representatives, and for such purposes the said committee or any subcommittee thereof is hereby authorized to sit and act during the present Congress at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as it deems necessary. Subpenas may be issued over the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member. The chairman of the committee or any member thereof may administer oaths to witnesses.*

*"That the said committee shall report to the House of Representatives during the present Congress the results of their*

tee's organization and procedure were governed by the rules of the House. Rule XI (f), Rules of the House of Representatives. Accordingly, the parliamentary practice of the House, that is, its rules and precedents, determined whether the Committee was functioning as a competent body at the time petitioner gave his false testimony.

The Constitution prescribes that a majority of the House shall constitute a quorum to do business and that the House shall determine its own rules of procedure (Art. I, sec. 5). It has never been held that the debates, deliberations, or other actions of that body are unconstitutional if a majority was not in fact present, unless the absence of a quorum was duly noted by the House.

"A quorum consists of a majority of the \* \* \* members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House. And the House proceeds upon the assumption that that number is present unless it is established to the contrary. The lack of a quorum might be brought to the attention of the membership by a Representative making a point of no quorum, by the Speaker on his own initiative taking cognizance of the number absent, or by a vote disclosing that too few were participating. When the roll call is not automatic, the Speaker counts to determine the number present, and his count, which is an-

studies and investigations with such recommendations for legislation or otherwise as the committee deems desirable."

nounced without delay, is not subject to verification by tellers." Riddick, *The United States Congress Organization and Procedure* (1949), p. 296. Cf. Cannon's *Procedure in the House of Representatives* (1939), pp. 277-278.

The practice of the Senate is similar. "For many years prior to the last decade of the nineteenth century at the opening of the first session of a Congress it has been customary for the Presiding Officer to direct the Sergeant-at-Arms to ascertain whether a quorum of the Senate was present. Since that time, at the beginning of each regular and extraordinary session of Congress with hardly an exception the practice has been at once to determine the presence of a quorum by a roll-call of the Senate. In the daily sessions of the Senate its business goes forward unless and until the question of the presence of a quorum is raised." Haynes, *The Senate of the United States* (1938), p. 358.<sup>4</sup>

It has been recognized that "in every legislative body large numbers of measures are permitted to take readings when a quorum is conspicuously absent. Nobody raising the question, the opposite of the fact is assumed, and very

<sup>4</sup>In the Senate, each standing committee is authorized to fix the number of its members (but not less than one-third of its entire membership) who shall constitute a quorum, except that, as in the House, a majority of the committee must actually be present in order to report any measure or recommendation. Rule XXV (3), Standing Rules of the Senate, Legislative Reorganization Act of 1940, *supra*, § 102.



rarely indeed with any damage to the public welfare. Questions seriously contested are certain to secure attendance." Luce, *Legislative Procedure* (1922), p. 48.

It is well established by parliamentary precedents that when the House regularly convenes, the business accomplished before the lack of a quorum is brought to the notice of the chair is not thereafter subject to challenge on that score. For example, after the journal of a preceding session has been read and approved, an objection to the journal cannot be made on the ground that a quorum was absent when the House action was taken. 4 *Hinds' Precedents*, § 2927. Likewise, objections to the validity of a committee report, on the ground that a quorum of the Committee had not been present, are untimely if made after the House has voted to consider, or has actually begun consideration of the report. 4 *Hinds' Precedents*, § 4598; 6 *Cannon's Precedents*, § 655; 8 *Cannon's Precedents*, § 2223.

The distinction between the presence of a quorum at the beginning of a session and its presence at all times thereafter was emphasized by Speaker Gillett, who ruled as follows: "The Chair was for many years a member of the Committee on Appropriations, and it is the recollection of the Chair that that committee was scrupulous that there should always be a quorum present. That, of course, does not mean—and it has occurred to the Chair that it might have happened

in this present instance—that a quorum of the committee was present every minute. Men would go in, and would go out, and come back. But the roll call must disclose that a quorum was present, and the Chair thinks that is the practice of most of the committees. But inasmuch as it is admitted here that there was no quorum present, the Chair sustains the point of order.” 8 *Canon's Precedents*, § 2222, p. 38.\*

This Court has held that it will not interfere with Congressional rules of procedure so long as they do not violate fundamental rights. *United States v. Ballin*, 144 U. S. 1; *United States v. Smith*, 286 U. S. 6, 33. The *Ballin* case involved an attack upon a statute on the ground that a quorum was not present when it passed the House, notwithstanding that the Speaker had announced the presence of a quorum in accordance with a rule of the House. In sustaining the validity of this rule, the Court said (pp. 5-6):

The Constitution provides that “a majority of each [house] shall constitute a quorum to do business.” In other words, when a majority are present the house is in a position to do business. Its capacity

\* The precedent cited by petitioner (Pet. 29-30) is not in point here. There was not in that instance a duly constituted committee meeting because the number of members required for a quorum never met at any time as a unit, whereas in the case at bar a majority of the committee was in fact simultaneously in attendance at the beginning of the afternoon session.

to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the Constitution requires is the presence of a majority, and when that majority are present the power of the house arises.

But how shall the presence of a majority be determined? The Constitution has prescribed no method of making this determination, and it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact. It may prescribe answer to roll-call as the only method of determination; or require the passage of members between tellers; and their count as the sole test; or the count of the Speaker or the clerk, and an announcement from the desk of the names of those who are present. Any one of these methods, it must be conceded, is reasonably certain of ascertaining the fact, and as there is no constitutional method prescribed, and no constitutional inhibition of any of those, and no violation of fundamental rights in any, it follows that the house may adopt either or all, or it may provide for a combination of any two of the methods. That was done by the rule in question; and all that that rule attempts to do is to prescribe a method for ascertaining the presence of a majority, and thus establishing the fact that the house is in a condition to transact business.

Judicial recognition of the parliamentary practice by which the presence of a quorum for the transaction of business is assumed in the absence of a disclosure to the contrary, by a vote or by the raising of a point of order, does not violate any fundamental right of a witness before a committee. As the court below pointed out (R. 276), it "is required by a reasonable regard for the substance of things and by the respect courts owe to Congress. It gives some protection to the public interest in discouraging perjury intended and apt to influence congressional committees, and injures no private interest except freedom of perjury." Certainly, the Chairman of the Committee was acting at least in a *de facto* capacity in administering the oath to petitioner and it has repeatedly been held that perjury may be predicated on false statements under oath administered by *de facto* officers. *Jordan v. United States*, 60 F. 2d 4 (C. A. 4), certiorari denied, 287 U. S. 633; cf. *Blair v. United States*, 250 U. S. 273; *McDowell v. United States*, 159 U. S. 596, 601-602. Moreover, petitioner intended to mislead not only the members present but the whole Committee and the House of Representatives. This committee meeting was one of a series which eventually resulted in a report by the Committee (H. Rep. No. 245, 80th Cong., 1st sess.), which was considered by the House without any question being raised of the validity

of the hearings, and formed a basis for the enactment of the Taft-Hartley Act.

In effect, petitioner insists that the Committee was required to suspend its hearing as soon as less than a majority was present or run the risk that he and other witnesses would testify falsely with impunity. But this contention places an undue limitation upon the right of Congressional committees and of Congress to determine their own rules of procedure. The "appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination" may, indeed, remove the quorum issue from the jurisdiction of federal constitutional courts on the ground that it is a political question. *Coleman v. Miller*, 307 U. S. 433, 454-455. The Committee was authorized by the House to sit at all times (H. Res. No. 111, *supra*, pp. 14-15, note 3) and members of the Committee who were absent during part or all of the testimony of a particular witness were presumably satisfied to have the hearing proceed without them and to rely upon the transcript of testimony. Otherwise they could have raised a point of no quorum and terminated the session.

Petitioner cannot pick and choose among the relevant House procedural rules; he cannot accept that provision which requires a majority of the committee to be present at the opening and reject



the correlative well-established principle that the committee remains validly constituted until the lack of a quorum is suggested. No constitutional requirement of a quorum governs committee proceedings and, indeed, the Senate regards one-third of the committee membership as sufficient to constitute a quorum. See *supra*, p. 15, note 4. Since petitioner relies, as he must, on the House rules, he is bound by all of them.

In permitting the hearing to continue, the committee members were entitled to depend upon the truth of the testimony without the qualification that sanctions to assure the truth became inoperative at any time that less than a majority were present in the hearing room. If petitioner is correct, the Government would be required to prove the exact time at which a perjurious witness testified, and the physical composition of the committee at that precise moment. In view of the fact that petitioner was under oath, knew that he was testifying before a committee which was functioning in formal session, and gave no warning to the Committee that he did not regard himself as bound by his oath, such a strict requirement of proof is not warranted by any regard for fundamental rights of witnesses.

It is immaterial whether petitioner had the right to raise the issue of no quorum and thus stop further proceedings until the presence of a quorum was established. We think that the Committee would have remained competent unless

the correlative well-established principle that the committee remains validly constituted until the lack of a quorum is suggested. No constitutional requirement of a quorum governs committee proceedings and, indeed, the Senate regards one-third of the committee membership as sufficient to constitute a quorum. See *supra*, p. 16, note 4. Since petitioner relies, as he must, on the House rules, he is bound by all of them.

In permitting the hearing to continue, the committee members were entitled to depend upon the truth of the testimony without the qualification that sanctions to assure the truth became inoperative at any time that less than a majority were present in the hearing room. If petitioner is correct, the Government would be required to prove the exact time at which a perjurious witness testified, and the physical composition of the committee at that precise moment. In view of the fact that petitioner was under oath, knew that he was testifying before a committee which was functioning in formal session, and gave no warning to the Committee that he did not regard himself as bound by his oath, such a strict requirement of proof is not warranted by any regard for fundamental rights of witnesses.

It is immaterial whether petitioner had the right to raise the issue of no quorum and thus stop further proceedings until the presence of a quorum was established. We think that the Committee would have remained competent unless

the point of order was made by a member. But it was at least incumbent upon petitioner to make known his opposition to testifying before less than a majority, so that if his opposition were deemed meritorious by any member, an opportunity would have been afforded for absent members to have been summoned.

The practice of other multiple-member agencies, such as three-judge courts and municipal boards and councils, to which petitioner refers, is distinguishable. In those instances, the constituting authority determined that competency of the particular tribunal or body required the presence of a quorum throughout the proceedings. Here, on the other hand, the House of Representatives, the constituting authority of the Committee, authorized and approved the practice whereby the competency of the Committee, no less than its parent, continued despite the presence of less than a majority of the members until such times as the absence of a quorum was suggested. The only restriction imposed by the House was that "no measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present." § 133 (d), Legislative Reorganization Act of 1946, *supra*; cf. 8 *Cannon's Precedents*, §§ 2209, 2211-2212, 2220, 2249. This express reference to the actual presence of a majority of the Committee members when a report is voted is a tacit recognition that other business, such as the taking

of testimony, may be conducted without that requirement. And the relative importance of the actual vote by which reports are submitted for House action, and the role which is played by political parties in such action, as contrasted with the preliminary task of ascertaining facts which, in any event, are embodied in a transcript available to all members,<sup>6</sup> clearly justified the emphasis upon the presence of a majority in the voting stage even though it is not required in the fact-collecting stage.

Petitioner argues that the courts below erroneously found the Committee competent on the basis of a presumption of continuity which properly should have given way to the overriding presumption of innocence. But the competency of the Committee does not rest upon a presumption that those members, comprising a majority, who were present at the outset of the afternoon session continued to be present throughout the time that petitioner testified. To the contrary, it is immaterial how many were present at that time so long as 13 or more members were present at the beginning of the session and no point was raised at any time thereafter that less than 13 were in attendance. If a "presumption" exists, it is that which is made conclusive by parlia-

<sup>6</sup> Cf. § 141, Rules of the House of Representatives: "The Librarian of the Library of Congress is authorized and directed to have bound at the end of each session of Congress the printed hearings of testimony taken by each committee of the Congress at the preceding session."



mentary practice, which recognizes a regularly convened committee as competent until such time as the point of no quorum is raised. The presumption of petitioner's innocence was fully overcome by proof beyond a reasonable doubt that, as defined by the House of Representatives, the Committee was competent at the time he testified.

Petitioner argues (Pet. 33-36) that the instruction of the trial court was at variance with the charge in *United States v. Stewart* (D. C. D. C., November 20, 1928, unreported). His labored analysis of the Stewart charge is at odds with the interpretation placed upon the charge by the Court of Appeals (R. 276, n. 1) and by Clarence Cannon, an outstanding authority on parliamentary law, who cited the case for the proposition, on which we support the trial court's instruction, that "if a quorum be present and subsequently Members leave temporarily or otherwise a quorum is presumed to be present until and unless the question of no quorum is raised." 6 *Cannon's Precedents*, § 345, syllabus.

B. *The official records of the Committee conclusively establish the presence of a quorum at the time petitioner testified.*—Up to this point, we have shown that the Committee was competent because a majority of the 25 members were in attendance at the beginning of the session and the absence of a quorum was not suggested at any time during the session. It was unnecessary, therefore, for the Government to prove that at the



precise time petitioner took the oath and testified at least 13 members were physically present. If, however, that fact should be deemed material, we contend that it was conclusively established by the official records of the Committee which were admitted in evidence. The Journal disclosed that the Committee met at 10 a. m., March 1, 1947, and adjourned at 5:25 p. m. and that 15 members were "Present" (R. 41). The tally sheet, Government's Exhibit 4, showed 14 members present at the afternoon session (R. 38). So far as is shown by these records and the transcript of proceedings, which together comprise the official records of the Committee, no less than a majority were present throughout the session. It is quite probable that some of the members may have left the hearing room from time to time in the course of the three-hour afternoon session but in view of the silence of the legislative record on such departures, we must, in deference to the record, assume that all who were recorded as present continued so throughout the proceedings.

This conclusion is consistent with the principle that enrolled statutes are not impeachable by proof of irregularity in their enactment, and certainly not by evidence outside the journal. *Field v. Clark*, 143 U. S. 649; *United States v. Ballin*, 144 U. S. 1; *Portland Gold Mining Co. v. Duke*, 191 Fed. 692, 695-696 (C. A. 8); *Ames v. Union Pacific Ry. Co.*, 64 Fed. 165, 167-170 (D. Neb.),

affirmed, 169 U. S. 466; 1 *Hinds' Precedents*, § 563; 4 *id.* §§ 2961, 2962; 4 Wigmore, *Evidence* (1940 ed.) § 1350. It is well established, even as to local legislative proceedings, that evidence of a different fact from that recorded, offered for the purpose of contradicting or altering official records, is inadmissible. *Penton v. Brown-Crummer Invest. Co.*, 222 Ala. 255; Annotation, *Admissibility of Parol or Extrinsic Evidence to Alter or Supplement Written Records of Local Legislative Bodies*, 98 A. L. R. 1229. Similarly, parol evidence offered to impeach court records has been excluded, as in *United States v. Walsh*, 22 Fed. 644 (D. Mass.), which also involved an attack by an alleged perjurer upon the competency of the tribunal.

It appears, therefore, that even upon petitioner's contention that the Government was required to prove the actual presence of 13 or more members of the Committee at the time he testified, the only evidence which was competent for that purpose conclusively established that fact. Petitioner's argument that the transcript of testimony itself disclosed the lack of a quorum by showing those members (less than 13) who were called upon by the Chairman, is unsound. The practice whereby the Chairman called upon members in turn to afford them an opportunity to interrogate the witnesses was not intended as a roll call. The references to those particular members who were called upon in this manner

does not establish that only those members were present. Other members indicated by a nod or other sign that they had no questions to ask (R. 55-56, 90-91, 97), and consequently, their names were absent from that portion of the transcript.

## II

THE GENERAL FEDERAL PERJURY STATUTE AND THE DISTRICT OF COLUMBIA PERJURY STATUTE ARE SUBSTANTIALLY IDENTICAL, DIFFERING ONLY IN THEIR TERRITORIAL APPLICATION AND THE PENALTIES PRESCRIBED; SINCE BOTH APPLY IN THE DISTRICT OF COLUMBIA AND THE SENTENCE IMPOSED WAS WITHIN THE MAXIMUM PERMISSIBLE UNDER EITHER, IT IS IMMATERIAL IN THIS CASE WHICH STATUTE PETITIONER VIOLATED

Petitioner urges (Pet. 43-49) that the indictment should have been drawn under the general federal perjury statute (Criminal Code of 1909, § 125, *supra*; p. 3) rather than under the District of Columbia perjury statute (22 D. C. Code [1940 ed.] 2501, *supra*, pp. 3-4). He argues that the former is applicable here because his perjured testimony was given before a congressional committee that was inquiring into matters "national in character and scope" (Pet. 46), and that consequently the fact that the perjuries occurred in the District of Columbia was irrelevant (Pet. 47).

The question whether perjury before a committee of Congress in the course of hearings relating to a matter of national concern, but com-

mitted in the District of Columbia, is governed by the general federal perjury statute or by the perjury section of the District of Columbia Code is admittedly not entirely free of doubt. On the one hand, petitioners would seem to come literally within the category of persons for whose punishment the local perjury statute provides, viz., a "person who, having taken an oath \* \* \* before a competent tribunal, officer, or person, in any case in which the law authorized such oath \* \* \* to be administered, that he will testify \* \* \* truly; \* \* \* wilfully and contrary to such oath \* \* \* states \* \* \* any material matter which he does not believe to be true, shall be guilty of perjury; \* \* \*." On the other hand, he would seem equally to come within the category of persons for whose punishment the general federal statute provides. And there can be no doubt that the general federal perjury statute is applicable in the District of Columbia. *Johnson v. United States*, 225 U. S. 405, 413-414.<sup>8</sup>

Indeed, there is no substantial difference between the two statutes in so far as they define the crime of perjury. The only difference is that the general federal statute, in referring to the law under which the authority to administer the oath is conferred, uses the words "a law of the United States," whereas the local statute refers merely to "the law."

\* The general federal perjury statute was contained in chapter 6 of the Criminal Code of 1909, 35 Stat. 1111. The Government conceded in the *Johnson* case (No. 1075; O. T. 1911, Government's brief, p. 10), and this Court found no difficulty in accepting the concession. (*Johnson v. United*



Regardless, however, of whether petitioner is right in his contention that an indictment for perjuries of the type of which he was convicted should be brought under the general federal statute, it does not follow that the error, if any, vitiates his conviction. The two statutes, as we have indicated, are substantially identical with the exception of the penalty provisions. The language of the indictment conforms to the rule requiring "a plain, concise and definite written statement of the essential facts constituting the offense charged" (Rule 7 (c), F. R. Crim. P.), and it clearly stated offenses within the general federal statute. Assuming that the latter statute governs, the mere fact that the District of Columbia statute was cited in the caption and that it was believed by the prosecutor and court that the local statute applied is not ground for reversal unless prejudice is shown. *United States v. Hutcheson*, 312 U. S. 219, 229; *Williams v. United States*, 168 U. S. 382, 389; Rule 7 (c), F. R. Crim. P. There was no prejudice. Petitioner was fully informed of the charge. He would have been tried in the same court, by the same judge, jury, and prosecutor, and the issues at the trial would have been precisely the same, regardless of which of the two statutes applied.

*States; supra*, at 413-414), that the first ten chapters as well as the twelfth chapter of the Criminal Code are applicable in the District of Columbia since they "deal with offenses Federal in their nature."



Petitioner's contention that there was prejudice because he was sentenced to a maximum of six years imprisonment whereas under the general federal statute the maximum is five years. (Pet. 49) is without merit. Petitioner was convicted on five separate counts<sup>9</sup> and was sentenced generally on all of them. The six-year term was therefore valid, since it is well settled that a general sentence on several counts is valid if it does not exceed the aggregate punishment which could have been imposed on all. *In re De Bara*, 179 U. S. 316; *Levine v. Hudspeth*, 127 F. 2d 982, 984 (C. A. 10), certiorari denied, 317 U. S. 628; *McKee v. Johnston*, 109 F. 2d 273, 275 (C. A. 9), certiorari denied, 309 U. S. 664; *Ross v. Hudspeth*, 108 F. 2d 628, 629 (C. A. 10); *United States v. Sposato*, 73 F. 2d 186, 187 (C. A. 2); *Jones v. Hill*, 71 F. 2d 932 (C. A. 3); *Warden of United States Penitentiary Annex v. DeLondi*, 62 F. 2d 981, 982 (C. A. 10); *Fleinn v. United States*, 57 F. 2d 1044, 1047 (C. A. 8), certiorari denied, 287 U. S. 627; *Hawkins v. United States*, 14 F. 2d 596, 597-598 (C. A. 7), certiorari denied,

<sup>9</sup> Separate false statements are separately indictable, even though all relate to the same general subject of inquiry and are made at the same hearing. *Seymour v. United States*, 77 F. 2d 577, 581 (C. A. 8); *United States v. Cason*, 39 F. Supp. 731, 734-735 (W. D. La.). It is evident that the false statements ascribed to petitioner in the separate counts of this indictment, though all were linked to the same general subject matter, each represented a different facet of his relations with the Communist Party.

273 U. S. 740; *Rice v. United States*, 7 F. 2d 319, 321 (C. A. 9); *Neely v. United States*, 2 F. 2d 849, 852-853 (C. A. 4).<sup>10</sup>

### III

NO VALID CHALLENGE OF THE JURY PANEL WAS MADE.

Petitioner contends that his constitutional right to trial by an impartial jury was impaired by the failure of the trial court to inquire whether the Government had obtained through an F. B. I. investigation any information about the jury panel which was not available to him. The short answer to this contention is that petitioner neither asked the court to make any such inquiry nor sought an opportunity to offer evidence in support of his challenge to the panel. Petitioner's counsel merely noted that Government counsel had papers which "apparently contain additional information" about the jurors, and he asked for a copy "so that we may have the same benefit of the same information that the Govern-

<sup>10</sup> It should be observed that, if petitioner is correct in his contention that the general federal statute applies, he should have been fined as well as sentenced to imprisonment, since that statute, unlike the local statute, makes the imposition of both fine and imprisonment mandatory. The failure to impose a fine, however, would, of course, be "an error of which the defendant does not and cannot complain." *Jordan v. United States*, 60 F. 2d 4, 6 (C. A. 4), certiorari denied, 287 U. S. 633; *Flynn v. United States*, 50 F. 2d 1021, 1022 (C. A. 7); *Nancy v. United States*, 16 F. 2d 872 (C. A. 9), certiorari denied, 274 U. S. 745; *Bartholomew v. United States*, 177 Fed. 902, 906 (C. A. 6), certiorari denied, 217 U. S. 608; cf. *Bozza v. United States*, 330 U. S. 160, 165-167.

ment has," and, further, "If it is true, as I think from the sheets that I see in the Government's possession, that they have had an F. B. I. investigation made of the jury, I raise that. \* \* \* as an objection to this panel \* \* \* " (R. 29-30).

The Government is not required to furnish defense counsel with its private notes which it uses in selecting a jury. The interests of justice do not require the prosecutor to disclose his reasons for accepting or peremptorily challenging any prospective jurors. Petitioner's challenge to the panel was based solely on speculation, unsworn and unsupported by proof or offer of proof, that an F. B. I. investigation of the prospective jurors had been made. In view of petitioner's failure even to flatly allege that an F. B. I. investigation had been made and to sustain his burden as a moving party of introducing or offering evidence in support of his challenge, the trial court properly refused to disqualify the panel. *Frazier v. United States*, 335 U. S. 497, 503; *Glasser v. United States*, 315 U. S. 60, 81; *Martin v. Texas*, 200 U. S. 316; *Tarrance v. Florida*, 188 U. S. 519; *Smith v. Mississippi*, 162 U. S. 592. Even if petitioner had proved or offered to prove that the panel had been investigated by the F. B. I., his objection would have fallen short of legal sufficiency. He did not allege that any juror was aware that he had been investigated, or that the investigation, if any, had a tendency to intimidate the jurors, let alone that

they had in fact been intimidated or rendered partial." *Sinclair v. United States*, 279 U. S. 749, upon which petitioner relies, is thus not germane. Moreover, that case, in which this Court held that shadowing of jurors during the course of a trial may constitute contempt of court, whether or not the jurors are conscious of it, does not support petitioner's contention that any investigation of prospective jurors, with or without their knowledge, automatically disqualifies them from jury duty. That decision had nothing whatever to do with the question of disqualification of a jury panel.

#### IV

#### THERE WAS NO ERROR IN THE TRIAL COURT'S DENIAL OF PETITIONER'S MOTION TO SUBPOENA WITNESSES AT GOVERNMENT EXPENSE OR TO TAKE THEIR DEPOSITIONS

Petitioner argues that the denial by the trial court of his motion to subpoena certain witnesses at Government expense or, in the alternative, to order their depositions taken and adjourn the trial for that purpose deprived him of his constitutional right to a fair trial. Petitioner abandoned this point by stipulation in the Court of Appeals (R. 272-274; see pp. 9-10, *supra*) and raised it for the first time after decisions in a petition for rehearing, which was denied without opinion (R. 282-284).<sup>11</sup>

<sup>11</sup> The petition for rehearing also presented for the first time the contention that the trial court erred in refusing to permit petitioner to read to the jury part of the transcript



This Court has repeatedly said that it will not pass upon issues not pressed in the Court of Appeals. *Sonzinsky v. United States*, 300 U. S. 506, 514; *Husty v. United States*, 282 U. S. 694, 701-702; *Duignan v. United States*, 274 U. S. 195, 200. In view of petitioner's abandonment of these issues previously, the petition for rehearing did not require the Court of Appeals to pass upon them (*Nailling v. United States*, 142 F. 2d 551 (C. A. 6); *Lee v. United States*, 91 F. 2d 326, 332 (C. A. 5); certiorari denied, 302 U. S. 745; *Tinkoff v. United States*, 86 F. 2d 868, 884 (C. A. 7); certiorari denied, 301 U. S. 689) and, except for the formal recital, "On consideration of appellant's petition for rehearing", which appears in the *per curiam* order denying the petition (R. 284), there is no indication that any consideration was given below to these issues.

It is clear, moreover, that petitioner's contentions are untenable on their merits for he has not shown such abuse of discretion by the trial judge as would constitute reversible error.

of the Committee hearing which had been admitted as a Government exhibit and from which Government counsel had read another part. This contention is specious. Petitioner attempted to read the portion of the transcript which related to the Allis-Chalmers strike, which was extraneous to the charge of perjury on which he was being tried, and the judge properly concluded that no purpose would be served in consuming the time of the court by reading such irrelevant matter. In any event, since the entire transcript was in evidence and was thus available to the jury, we fail to see how petitioner was prejudiced.



*Goldsby v. United States*, 160 U. S. 70, 73; *Crumpton v. United States*, 138 U. S. 361, 365; *Dupuis v. United States*, 5 F. 2d 231 (C. A. 9); *Gibson v. United States*, 53 F. 2d 721 (C. A. 8), certiorari denied, 285 U. S. 557; *Wong Yim v. United States*, 118 F. 2d 667 (C. A. 9), certiorari denied, 313 U. S. 589. Neither the printed record nor the original record on file in this Court discloses the bases for the trial court's action, but it appears that on February 11, 1948, when petitioner filed his motion to secure the attendance of witnesses at the expense of the Government or, as an alternative, to delay the trial for the purpose of taking depositions, more than six months had elapsed from the filing of the indictment (R. 28) and only a few days remained before the trial was to begin on February 16, 1948. Apart from the apparent untimeliness of the motion, the trial judge might properly have found the application insufficient under Rules 17 (b) and 15 (a), F. R. Crim. P. since the proposed testimony of these witnesses was merely cumulative character evidence. As it turned out, other witnesses appeared in his behalf for that purpose, and petitioner was, therefore, not prejudiced.

## CONCLUSION

For the reasons stated, we respectfully submit that the judgment of the court below should be affirmed.

PHILIP B. PERLMAN,  
*Solicitor General*

ALEXANDER M. CAMPBELL,  
*Assistant Attorney General.*

ROBERT S. ERDAHL,

HAROLD D. COHEN,

PHILIP R. MONAHAN,

*Attorneys.*

APRIL 1949.